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MACKENZIE VALLEY PIPELINE INQUIRY

IN THE MATTER OF AN APPLICATION BY CANADIAN ARCTIC GAS
PIPELINE LIMITED FOR A RIGHT-OF-WAY THAT MIGHT BE
GRANTED ACROSS CROWN LANDS WITHIN THE YUKON TERRITORY
AND THE NORTHWEST TERRITORIES FOR THE PURPOSE OF THE
PROPOSED MACKENZIE VALLEY PIPELINE

and

IN THE MATTER OF THE SOCIAL, ENVIRONMENTAL AND ECONOMIC
IMPACT REGIONALLY OF THE CONSTRUCTION, OPERATION AND
SUBSEQUENT ABANDONMENT OF THE ABOVE PROPOSED PIPELINE

(Before the Hon. Mr. Justice T.R. Berger, Commissioner)

Yellowknife, N.W.T.

September 12th, 1974.

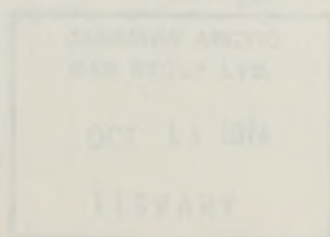
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Vol. VII

CANADIAN ARCTIC
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Yellowknife, N.W.T.

September 12th, 1974.

P R O C E E D I N G S

THE COMMISSIONER: I wonder if we might call our gathering to order.

Ladies and Gentlemen, I want to say at the outset that I propose this morning to give an opportunity to Mr. Scott, Commission Counsel, to outline his proposals regarding the time table for the hearing and the way in which the hearing ought to proceed.

I should say that my list indicates that Mr. Scott is here as Commission Counsel and with him are Mr. Goudge and Mr. Roland. We will then call on the representatives of the other intervenors and other parties present and I will just run through the list.

Mr. Anthony and Mr. Lucas for Canadian Arctic Resources Committee. Mr. Cumming and Mr. Bailey for the Committee for Original Peoples Entitlement and the Inuit Tapirisat of Canada.

For Canadian Arctic Gas, Mr. Goldie, Mr. Marshall, and Mr. Carter. Representing the Indian Brotherhood of the Northwest Territories and the Metis Association of the Northwest Territories, Mr. Sutton. Mr. David Reesor appears for the Northwest Territories Association of Municipalities and Mr. Gibbs for Foothills Pipelines Ltd. Mr. Lueck appears for the Council of Yukon Indians.

Now, that is not to say that

1 those people will have a monopoly on the floor today.
2 It is merely to say that I want to hear from all of
3 them about Mr. Scott's proposals and anyone else will
4 be given an opportunity to say anything that he wishes
5 about Mr. Scott's proposals as we proceed.

6 In addition the Inquiry has
7 received a number of written submissions that will be
8 read later on today.

9 I should say before calling
10 on Mr. Scott that I handed down my Preliminary Ruling
11 in this Inquiry on July 12th. The requests for supple-
12 mentary information that were prepared by the Pipeline
13 Application Assessment Group established by the
14 Government of Canada, those requests for supplementary
15 information were prepared for the Inquiry and distri-
16 buted by the Inquiry, those were sent out in July.

17 As I said I would in my pre-
18 liminary ruling, I undertook an informal visit to the
19 Mackenzie Valley and the Mackenzie Delta and the
20 Northern Yukon. I sought through Mr. Waddell to
21 advise all those concerned, the intervenors as well as
22 Arctic Gas about my travels and Mr. Waddell has pre-
23 pared a complete itinerary that is available to anyone
24 who wishes to know where the Commissioner has been all
25 summer.

26 I can't imagine anyone
27 really being anxious to know that, but in keeping with
28 the principle of openness in this Inquiry, that is
29 available to anyone who wishes to have it. In fact I
30 will ask Miss Hutchison, who is acting as Secretary to

1 the Inquiry, to have it marked as an exhibit so it will
2 be on record.

3 I propose that a copy of the
4 transcript, a copy of all exhibits, and all material
5 filed should be available to any member of the public
6 at the headquarters of the Inquiry here in Yellowknife.
7 The Inquiry Headquarters here in Yellowknife are the
8 Old Resources Building on 51st Avenue and the Inquiry
9 documents and all of the exhibits and all material
10 filed by any intervenor will be available there during
11 ordinary office hours to any member of the public who
12 wishes to examine them, and assistance will be provided
13 in supplying copies within reasonable limits. It is
14 proposed also to have all the material available to any
15 member of the public who wishes to examine them at the
16 Inquiry Branch Office in Ottawa.

17 I hope also to make that
18 material available in Inuvik and Whitehorse as well,
19 but arrangements haven't so far been completed to do
20 that.

21 I should also say, that as
22 Commissioner, I undertook in late June to visit Washing-
23 ton, D.C., and I sent a letter through Mr. Waddell to
24 Arctic Gas and all the intervenors about that trip and
25 that will also be marked as an exhibit and anyone want-
26 ing to know about it can look at that letter.

27 There is another matter I
28 think I should raise at the outset and that is during
29 the course of my travels during the summer to the
30 cities and towns, villages and hamlets, settlements,

1 and any other communities that don't fall within that
2 list, I was concerned about the evidence to be given in
3 this Inquiry being made available in some fashion or
4 other to the people living in the Mackenzie Valley
5 Delta and in Old Crow, as well as around the perimeter
6 of Great Slave Lake, and I wrote to the President of
7 the C.B.C., Mr. Picard, and I asked if he would co-
8 operate with the Inquiry in broadcasting summaries of
9 the evidence given at the hearing, and as a result of
10 that, the President of the C.B.C. has sent Mr. Cowan,
11 the Director of the C.B.C. Northern Service, to
12 Yellowknife and the full co-operation of the C.B.C. has
13 been promised, and I have asked Michael Jackson of the
14 Inquiry Staff, who is acting as co-ordinator of the
15 Community Hearings, to hold a meeting tonight at the
16 Inquiry Offices at 8:00 o'clock with representatives of
17 all parties and with others to discuss the best way in
18 which to take advantage of the offer of co-operation
19 extended by C.B.C. I think it will be useful to hold
20 a meeting of that kind rather than try to sort it all
21 out here this morning.

22 I think I should also say
23 that the Advisory Group employed by the Inquiry, and
24 the Inquiry Staff, will be working under the direction
25 of Mr. Scott as Commission Counsel, and I think it is
26 important to assure the parties that their views re-
27 garding the issue that will be in dispute in this
28 hearing will not be available to me as Commissioner.
29 They will be employed essentially to assist Commission
30 Counsel in his work as the hearing proceeds.

1 The members of the Advisory
2 Group have from time to time accompanied me in my
3 travels throughout the North during the summer but that
4 has been essentially to give me an understanding, some-
5 times a very necessary thing in understanding the
6 machinery, the flora and fauna I am looking at.

7 I think I should say no mem-
8 ber of the Advisory Group, no member of the Inquiry
9 Staff has sought at any time to express a view to me
10 about the merits of any of the issues that we expect
11 will be coming before this Inquiry. I don't expect
12 any of them will have an opportunity nor would any of
13 them desire to do so during the future course of the
14 Inquiry.

15 Having said these things, I
16 will ask Mr. Scott to open the proceedings.

17 MR. SCOTT: Mr. Commissioner,
18 I think first of all I owe it to the persons here who
19 have been at some of the other preliminary hearings to
20 introduce myself. My name is Scott. With me on my
21 immediate right is Ian Roland and next to him is Keith
22 Goudge who will be assisting me from time to time in my
23 work with the Commission as it proceeds.

24 I was appointed, as you know,
25 sir, as your counsel late in June and as a consequence
26 I was not able to participate in the hearings which had
27 taken place in the various communities of the North and
28 Ottawa before that. We have, however, carefully read the
29 transcript of those hearings and carefully reviewed the
30 oral and written submissions that were made in order to

1 become aware of the views of the people of the North
2 and the interested parties as to the way in which this
3 Inquiry should best be conducted.

4 In aid of the understanding of
5 the aspirations of some of the parties, we also con-
6 vened an informal meeting in Ottawa involving a number
7 of persons who we think will be continuing parties at
8 this Inquiry from start to finish. The purpose of that
9 meeting was merely to allow me to assess their views as
10 to the way in which the Inquiry work should proceed.
11 It was not intended and that meeting did not of course
12 produce any determination in my mind, or of course in
13 the Commission's mind, as to the form of inquiry hearing
14 in the future should take. It was informative and to
15 that extent for me extremely useful.

16 I think I owe it to the
17 citizens of the North and to the other participants to
18 outline briefly first the functions that Commission
19 Counsel and my associates propose to assume for our-
20 selves.

21 We first of all intend to
22 take an active role in the proceedings. We do not see
23 it as desirable or proper that we should simply become
24 the floor managers of the Inquiry exercise in which
25 others participate. We propose therefore to take an
26 active role in line with the Commissioner's ruling in
27 his preliminary reasons, that is that it is essential
28 that all evidence and all relevant material that bears
29 on the issue should be before him.

30 Only, sir, in that way in our

1 judgment will it be possible for a reasonable and fair
2 estimation to be made by him. So our interest in this
3 Inquiry, our primary interest is to assure by whatever
4 means are necessary that the inquiry is a full one and
5 a fair one. In order to do that we intend to cross-
6 examine witnesses, in due course, to ask questions of
7 persons who want to be heard and want to say things to
8 the Commissioner. We propose to develop evidence if it
9 be appropriate in certain areas and we propose to lead
10 it before the Commission at the appropriate time and
11 submit to the cross-examination or the questioning of
12 other participants or citizens in the North and to do
13 that we are developing, and are in the course of develop-
14 ing, a staff to advise us, and to assist us as the evi-
15 dence develops and to assist us in preparing whatever
16 evidence of our own we think it appropriate to lead
17 before the Commission.

18 As I say, that Staff is in
19 the course of being developed and a major component of
20 it is effective now. The advisors that the Commissioner
21 appointed to advise him at an earlier stage, shortly
22 after his appointment.

23 Effective now I think it may
24 be said without any doubt that those advisors are part
25 of the Commission Counsel Staff and will assist us and
26 be under our direction as the work of the inquiry pro-
27 ceeds.

28 Now, in outlining and develop-
29 ing that active role of Commission Counsel, I think it
30 desirable to make two points about it. The first is

1 that in pursuing that role we propose to be independent
2 of the Commissioner, you, sir, yourself. We will develop
3 the role that we think it appropriate to develop. We
4 will develop the evidence that we think is required to
5 be put before you. We will develop the cross-
6 examination that we think it appropriate to have as the
7 witnesses or participants come forward to give evidence
8 or say their piece, and I am sure that everybody here
9 will understand clearly that we alone are responsible
10 for the evidence we lead, the questions that we ask.
11 The submissions that we make. They will be our ques-
12 tions and I trust they will not be misunderstood by
13 anybody that they are in any sense, sir, your ques-
14 tions. It will be our evidence, it will not be your
15 evidence, and in my respectful view it will have no
16 additional consequence or weight because it is developed
17 from the office of Commission Counsel.

18 So the first point I want to
19 emphasize is in pursuing its role we see ourselves as
20 independent of the Commissioner. The second thing, it
21 goes without saying is that we see ourselves indepen-
22 dent of any of the participants in the proceedings.
23 We are prepared to ask questions of all of them as they
24 give evidence or make submissions or make their point,
25 and I trust it will not be concluded that because we
26 press hard here or press hard there that in any sense
27 we are taking sides in a line with any participant or
28 the view of any citizen or group.

29 Our function as we see it is
30 to do these things with a single objective, the objec-

1 tive being to get all the evidence that is relevant be-
2 fore the Commissioner in the most effective and effic-
3 ient way. That is how we see our role as the inquiry
4 develops.

5 I think I should tell you two
6 other things that will be significant, I think, in the
7 consideration of what we are going to undertake, the
8 way in which the inquiry work should proceed. The first
9 has to do with the Assessment Group and its report.
10 As you know the Government of Canada appointed an inde-
11 pendent group, I think largely if not entirely experts
12 within the Civil Service to assess the application sub-
13 mitted by Arctic Gas. The point of the assessment was
14 that in due course a report would be produced and that
15 report would be forwarded to the Inquiry and the Inquiry,
16 thinking of your ruling, sir, undertook when it was
17 received to circulate it to the participants or indeed
18 any other person who wants to see it.

19 Now, as promised the Assess-
20 ment Group has forwarded to the Inquiry a request for
21 supplementary information, as I think it is called, and
22 sometime ago the Inquiry Staff forwarded that request
23 to Arctic Gas. I have provided copies of the request
24 to the various intervenors.

25 I am advised by the applicant
26 Arctic Gas that their responses to that request for
27 supplementary information are being prepared and the
28 best judgment, as I understand it, is that those replies
29 will be completed towards the end of September and at
30 that stage, as I understand the matter, they will be

1 forwarded to the Inquiry which will in turn deliver
2 them to the Assessment Group and copies will again, I
3 think, as before be available at least for inspection
4 at the Inquiry Offices in Yellowknife.

5 I am advised by the Assessment
6 Group that it anticipates that its report on the applica-
7 tion will be available to the inquiry towards the end
8 of October.

9 It is hoped that that report
10 will include comments on certain of the responses of
11 Arctic Gas to the request for supplementary informa-
12 tion but it is quite conceivable that it will not be
13 possible by the end of October to fully comment on all
14 the responses that the Applicant has made, and that as
15 a consequence it may be necessary for the Assessment
16 Group to make a supplementary report that will fill out
17 its comments on the responses because the responses
18 have not as yet been seen by the Assessment Group,
19 it is impossible to establish any time table for that
20 supplementary report.

21 The third thing I think it is
22 significant to say is that, as directed by you, sir,
23 the Commission Counsel staff is in the course of pre-
24 paring a list of government reports and studies that
25 may be relevant to the Inquiry's work or touch in some
26 way on the Inquiry field of interest. As I say, we are
27 in the course of preparing that list and we anticipate
28 it will be available to the participants or interested
29 persons by the end of September or early October.

30 We hope that we will have

1 about the same time the reports and studies that are
2 listed available for inspection in the Inquiry's Office,
3 and we propose that when the list is in the parties
4 hands, in the participants hands, the appropriate course
5 will be for you to invite the Commission Counsel to
6 obtain a copy of any report or study shown on the list,
7 and following upon such a request, we will request the
8 Government to release it.

9 Now, I think it is reasonably
10 apparent that this inquiry work will take a substantial
11 period of time. It is also I think reasonably appar-
12 ent that there are five or six or seven participants or
13 organizations, including the applicant, that will be a
14 continuing presence and will continually and regularly
15 participate in the taking of evidence and the securing
16 of submissions from beginning to end.

17 There will also be, I hope,
18 many citizens and other organizations that will parti-
19 cipate from time to time as matters that touch their
20 particular interest are raised or developed before the
21 Commission, and in addition there will be many other
22 people who are anxious in an informal way at these
23 hearings to give the Commissioner their views about
24 matters before him. What we are confronted with is the
25 fact that there will be six or seven major participants,
26 and I say major in the sense they will be continually
27 and actively engaged before the Commission from the
28 commencement of its work until the end, and it was for
29 the purpose of organizing the role of these continuing
30 participants that it was thought that some basic and

1 relatively simple rules should be developed.

2 The purpose of these rules is
3 not to confuse. It is not to create a barbed wire of
4 technicalities through which people may have difficulty
5 proceeding. The purpose of the rule really is to
6 ensure again that the Commission's work can be done
7 expeditiously and so it can be fairly and fully unfolded
8 and the rules have no other objectives, the rules I
9 propose have no other objectives and if they are criti-
10 cized on the account that they are not full or fair and
11 do not provide for a full or fair inquiry, that criti-
12 cism is a meaningful and significant one and should be
13 considered.

14 I think it should therefore
15 be said that in our submission, sir, these rules should
16 not in the first place have any application at the
17 proposed community hearings. They are in that setting
18 unnecessary.

19 The second thing that should
20 be said is that these rules should have no application,
21 should not bind those citizens or organizations who
22 wish to make their submissions known to the Commissioner
23 from time to time but who will not be actively engaged
24 day by day in the work of the inquiry.

25 Having said that, I hope it
26 can be seen that what is intended is to develop a
27 framework in which the major participants in the
28 interests of fairness will conduct themselves a cer-
29 tain way, and it will be understood by all that there
30 is nothing intended by the proposed rules that I will

1 submit to inhibit any person from coming forward and
2 asking a question or making a point or making an
3 argument. This is not the intention of these proposals.

4 I think a third thing should
5 be observed and it is this, that any set of rules ob-
6 viously have their defects. Any rules that I submit
7 clearly may have their defects. I see some of my
8 friends nodding at that observation. It may even be
9 that the rules ultimately adopted by the Inquiry, if
10 any, that are designed to apply in this way will have
11 their defects. It will be my third point that any
12 rules that are developed for the reception of evidence
13 for the conduct of the active participants must be
14 flexible. There will be occasions in which it is
15 within the discretion of the Commissioner to direct
16 that deviations may take place from those rules and
17 in my respectful view, sir, that is a desirable
18 characteristic of any set of rules. There will be an
19 occasion in which, again in the interests of a full
20 inquiry and a fair inquiry, the rules have to be
21 abrogated or weighed.

22 Having said that, let me turn
23 to the few rules in my respectful submission should
24 apply as we begin the work of the Inquiry.

25 Again I emphasize we are
26 talking about the formal hearings of the inquiry and
27 not the community hearings to which these rules would
28 not apply and we are talking about the rules that will
29 apply to the parties as I understand that term and not
30 to the citizens participation which we hope will be

1 continuous and active throughout the course of our
2 work.

3 The first proposal I make is
4 that the formal hearings of the Commission should be
5 held in the Northwest Territories. I can see that the
6 issues that are before the Inquiry will be issues that
7 are of interest and must be of interest to citizens
8 across Canada in the south as well as in the north, and
9 it may be desirable to conduct a number of hearings in
10 the south for the purpose of allowing residents of
11 those communities to make their submissions, but in our
12 respectful submission generally speaking the site of
13 the inquiry formal hearings should be in the North.

14 I do not think it follows
15 from that that they must all be at Yellowknife. It may
16 be from time to time it will be the direction of the
17 Commissioner that formal hearings be held in other
18 communities to the north in addition to Yellowknife.

19 The second submission I make
20 relates to participants and I have prepared a defini-
21 tion of participants which is contained in Submission
22 Two for the simple purpose of enabling the Commission
23 to make a catalogue of those persons who have appeared
24 at the inquiry or who are interested in its work so
25 that material, if required, can be circulated, so
26 that orderly participation, schedule, can be developed,
27 and we propose a very simple definition that any per-
28 son shall be deemed to be a participant to this hear-
29 ing if he appears at one of the formal hearings inclu-
30 ding the preliminary hearing and gives his name and

1 address as a person appearing to the Commission or he
2 advises the Commissioner in writing that he wants to
3 appear and we propose that special counsel, Mr. Waddell,
4 should maintain a list of the persons who have indi-
5 cated an active interest or desire to be heard by the
6 Inquiry.

7 The third submission relates
8 to applications and I think I should say by way of
9 introduction that there may be, as we go along, a
10 number of kinds of applications that are made to the
11 Commissioner, first of all some citizens or some
12 participants may wish to subpoena a witness. The
13 Commissioner has certain subpoena powers. Some
14 citizens or participants may wish to obtain a copy of
15 a document that is in the possession of somebody else
16 but which relates to the Inquiry. The Commissioner
17 has certain powers with respect to that but before he
18 can exercise his power he must be asked to do so .
19 And our third submission is that any application for
20 relief of that type or for other assistance made by
21 the participants shall be made upon reasonable notice
22 to Commission Counsel and to anybody else who is going
23 to be directly affected. So if "X" wants to get a
24 document from "Y", to choose a simple example, "X"
25 will write to the Commissioner saying I want you to
26 make an order for the production of that document and
27 I have sent a copy of this request to Mr. Scott and to
28 the person who has the document and then in due course
29 under that resume the Commissioner will decide whether
30 it is appropriate the document should be ordered pro-

1 duced or not.

2 The fourth submission relates
3 to the production of documents themselves. I think it
4 goes without saying that the production of documents is
5 a significant matter to all participants if the inquiry
6 is going to be a full and fair one. It may be that
7 many of the participants will have documents within
8 their possession, of various types, that relate to the
9 matters that are in issue before the inquiry.

10 Without reading the proposal
11 in full, what we propose is simply this, that any per-
12 son may, including Commission Counsel, may request a
13 person or organization appearing here to make up a
14 list of the reports or studies or other documents that
15 it has and that list will be filed with the special
16 counsel Mr. Waddell and I anticipate in due course
17 that those requests will be made to the major partici-
18 pants in the inquiry, including the applicant, and
19 that in due course if this rule is adopted each of
20 those persons so requested would be required to file
21 with Mr. Waddell a list of the reports and studies
22 that they have in their possession.

23 Now, the proposed rule calls
24 for a list of reports, studies, or other documents.
25 The scope of the rule, of the proposed rule, is a
26 difficult one because obviously there will be at the
27 one hand reports of a formal nature that should clear-
28 ly be produced and on the other hand there will be
29 correspondence which may have no particular signifi-
30 cance but which for the purpose of listing might im-

1 pose a burden on a party which would be extremely
2 onerous.

3 So, what is really contemplated by this recommendation is that the list should
4 encompass a list of reports, studies or other documents
5 of that kind within the possession or power of the
6 participant which relates to the matters before the
7 Commission.
8

9 Now, once that list has been
10 requested and has been filed with the special counsel,
11 it will be available for inspection by anybody who has
12 indicated a desire to participate in this inquiry and
13 when I say anybody, the recommendation means anybody,
14 not the major participants, any citizen who has indicated
15 his interest and intention to appear at the
16 inquiry. When he looks at the list, he may request the
17 person filing the list to produce for his inspection a
18 copy, the original or a copy of the document listed.

19 Now what is that all about?
20 That is in aid of the proposition that when these
21 documents exist, if they relate to the matters before
22 the inquiry, any other person who wants to see them
23 should have the opportunity to make that request. If
24 the request to inspect the documents is refused an
25 application can be made to the Commissioner upon
26 notice to us and he will decide whether the request is
27 an appropriate one or not.

28 Now, the other two portions of
29 the production recommendation, Mr. Commissioner, simply
30 spell out the particular requirements of that recommend-

1 ation as we see it.

2 The next substantial recommen-
3 dation has to do with discovery of witnesses and again
4 before reading this I want to emphasize it is intended
5 to provide an orderly way for the major participants to
6 call their witnesses and to receive in advance some
7 warning of what the other major participants witnesses
8 are going to say. It is not intended to be applicable
9 to citizens or organizations who wish merely to make
10 their views known to the Commissioner at occasional
11 appearances during the hearing of the inquiry. So it
12 really in my view causes no difficulty or imposes no
13 obligations on someone who simply wishes to partici-
14 pate sporadically in the work of the inquiry or have
15 his submissions heard by the Commissioner on an
16 occasional basis.

17 The rule requires that every
18 participant shall before giving evidence himself or
19 calling witnesses on his behalf file with the Special
20 Counsel, Mr. Waddell, at least two weeks before giving
21 evidence or calling such evidence a full synopsis of
22 that evidence together with a list of any reports,
23 studies or other documents to which that witness may
24 refer or upon which he may rely.

25 I think you can see, if you
26 accept the qualification that I have imposed, that it
27 does not apply to the individual participant. That
28 the purpose of that rule is so that as Arctic Gas
29 calls its evidence the interested parties who are
30 participating regularly will have some forewarning of

1 the nature of the evidence that is to be called and
2 will be prepared when it is called to listen to it with
3 the assistance of whatever experts they may have at
4 their very side and be prepared then and there, if
5 possible, to cross-examine about it. It is also
6 designed to work the other way so that when counsel
7 for the Commission calls a witness, we will be obliged
8 to allow the inquiry to know, some two weeks before,
9 who we intend to call and roughly by synopsis what he
10 is going to say so that the other parties again will
11 have an opportunity to have their experts by their
12 side to be in a position to listen to that witness'
13 testimony intelligently, and be in a position to cross-
14 examine effectively.

15 Submission Six relates to the
16 order and content of the hearing. Before reading this
17 submission I think it is significant to say that there
18 are probably two ways in which an inquiry of this
19 length and magnitude could be conducted. The first
20 would be to invite the applicant, Arctic Gas, to tender
21 all its evidence on all matters in issue in any sequence
22 it selected or chose.

23 Following the tender of that
24 evidence and the questioning about it by other parties
25 then the other parties would have a chance to call
26 their evidence. That is the usual process that would
27 be followed in an inquiry I think of normal dimensions.
28 An inquiry of this dimension it seems to me requires
29 another mode of receiving evidence.

30 A second mode, and we there-

1 fore propose to you, sir, that the formal hearings of
2 the inquiry should be divided into sections, each
3 section dealing with a particular aspect of the matters
4 that are before the inquiry with a view to allowing any
5 section of parties who wish to call evidence or wish to
6 make submissions to make their submissions within that
7 section of that topic.

8 We hope by adopting this
9 scheme there will be some economy of time and what is
10 more important the witnesses from all sides, from all
11 parts who give evidence on any given aspect of the
12 matter will be heard in sequence and together rather
13 than being spread out over a period of months.

14 This, I think, will make the
15 exercise a more meaningful one, from your point of
16 view, sir, and a more meaningful one from the point of
17 view of the interested public because when we are
18 talking about the impact on wildlife, for example, it
19 will be possible for the public and the Commissioner
20 to hear evidence from all the experts and the evidence
21 of all the citizens on that issue at once, at one time,
22 rather than spread out at various points throughout
23 the hearing, and that, hopefully, will make the
24 exercise more meaningful and will make judgment of the
25 issues easier.

26 Now, before the formal hear-
27 ings per se commence, you have directed, sir, that an
28 overview hearing should be conducted and you have laid
29 down in your preliminary ruling the subject areas that
30 are contemplated by the overview hearings and we are in

1 the course of developing evidence for this overview
2 hearing.

3 As we see it, the overview
4 hearings provide a kind of background to the formal
5 hearings at which the nature of the problem that will
6 be dealt with in the inquiry proper will be made clear
7 and they will hopefully provide a backdrop against
8 which the disputed evidence or disputed submissions
9 can be heard.

10 Now, it is our proposal that
11 this evidence, the overview evidence, which will be
12 largely the evidence of experts together with the
13 evidence of some native and white people who live in
14 the North, will be prepared by Commission Counsel and
15 we propose to consult with other persons and other
16 participants who indicate their desire to be consulted
17 about the nature of this overview evidence.

18 The overview evidence in our
19 judgment will probably take about one week to complete.

20 When the overview hearings
21 commence, it is our proposal that the witnesses will
22 be called and examined by Commission Counsel. It is
23 also our proposal, because this evidence is to pro-
24 vide merely a backdrop, that there will be no cross-
25 examination of the witnesses called at the overview
26 hearings but we undertake upon the reasonable request
27 of any participant to recall any overview witness for
28 cross-examination at a subsequent stage, at the sub-
29 sequent relevant stage of the proceedings.

30 When the overview evidence

1 is completed we hope that the Commissioner and the
2 interested citizens of the North will have a backdrop
3 against which to assess the difficult and complex
4 issues that are before the Inquiry and we would then
5 propose at the Inquiry should launch immediately into
6 the formal hearing.

7 We propose that the formal
8 hearing should be divided basically into four sections
9 and I have set those sections out in the written sub-
10 mission that I have filed with the special counsel.

11 The first section has to do
12 with the engineering of the pipeline and will include
13 such matters as the size of the pipeline, the location
14 and timing of the construction, the composition and
15 deployment of construction crews, the construction of
16 compressor stations and other like matters and it is
17 anticipated that at that stage the applicant and other
18 interested parties will call whatever evidence they have,
19 make any submissions they want, ask any questions they
20 want that relate to that matter, to engineering the
21 pipeline so by that stage the Commissioner, sir, and
22 the citizens who are interested in the work of the
23 inquiry will have seen the backdrop, the situation --
24 the tableau in the North as it is now, and will have
25 seen what it is proposed that is to be put into this
26 land. The pipeline will be described in detail, no
27 doubt, and questions will be asked by all participants
28 and citizens about it, and that will be the first phase
29 of the formal hearings.

30 Having had the backdrop and

1 having introduced the pipeline by that evidence, we
2 would then propose to move on to the second stage of
3 the formal hearings which will be evidence relating to
4 the effect of the pipeline on the physical environment
5 and would include such matters as the effect on perma-
6 forst, river crossings, slope stability, gravel, and
7 other borrow locations and like matter.

8 The third stage we propose is
9 evidence relating to the effect of the pipeline on the
10 living environment to include such matters as the
11 effect on plant and animal life within the area.

12 The fourth section and per-
13 haps for all of us the most important in the last
14 analysis, the effect of the pipeline on the human
15 environment to include such matters as social and
16 economic impact, of the construction of the pipeline,
17 its use and ultimate abandonment, the social and
18 economic impact of the pipeline impact on living and
19 non-living environment.

20 Now, it has been said that
21 leaving the effect of the pipeline on human environment
22 to stage four would somehow render it less important
23 or demean its significance before the Inquiry. That,
24 of course, is not the intention at all and I do not
25 think that if this scheme were adopted that would be
26 the result.

27 I think it can be said, all
28 matters are independent, but I think it can be said
29 that there is a sequence and this scheme whereby the
30 formal inquiry is divided into four sections is

1 designed to take account of that sequence. Nothing
2 happens until the pipeline is set into the land. It
3 has an effect on the physical environment. The pipe-
4 line and the effects on the physical environment have
5 an accumulative effect on the living environment, the
6 animal environment, the plant environment and thirdly
7 the pipeline, the effect on the physical environment,
8 the effect on the plant and animal environment all
9 have an accumulative effect on the human environment
10 and that is the theory on which these four sections
11 are proposed.

12 Now, I can see it will not be
13 a simple matter to divide the inquiry into four sec-
14 tions of that type. There will be cases in which there
15 will be substantial overlap. There will be cases in
16 which people who should have turned up for section one
17 turned up on section two and want to be heard and
18 there will be other difficulties about applying the
19 division.

20 I propose only to say two
21 things about that, I think the attempt to achieve the
22 division is a worthwhile one because in my respectful
23 submission, sir, it will make the effort a co-ordinated
24 one and a meaningful one, not only for you but for the
25 community as a whole.

26 In the second place, the
27 difficulties that will exist can be taken care of if
28 we approach the matter with complete flexibility. If
29 we recognize that there will be, that it will be
30 necessary from time to time to go back to hear what

1 other people have said at an earlier stage or to bring
2 them forward again to be asked further questions, and
3 if we approach the matter with that kind of flexibility
4 in my respectful submission, sir, there is no reason
5 why this kind of division in subject areas cannot be
6 effective and useful.

7 Now, Mr. Commissioner, the
8 next relates to community hearings. I have noted that
9 and I think it has been perhaps referred to that Pro-
10 fessor Jackson has been appointed the Co-Ordinator of
11 Community Hearings and in due course he will no doubt
12 be, later on, as things develop, he will be making
13 submissions to the Inquiry as to the way in which
14 these community hearings should in fact be conducted.

15 It seems to me that it is
16 unlikely that they will begin until the formal hear-
17 ings are well under way so that when the community
18 hearings take place the members of each community will
19 with the assistance of newspapers and actual participa-
20 tion here and perhaps the C.B.C. have some real aware-
21 ness of what has been said already about the pipeline
22 by the various participants.

23 Professor Jackson and our
24 staff will in due course be convening a committee of
25 all persons who are interested in determining the
26 appropriate format for the community hearings and
27 that format may well differ from community to commun-
28 ity and if you are interested in participating in the
29 development of such a format I suggest you should let
30 me or Professor Jackson know and then as I said earlier

1 the only thing we seem to know about the proposed
2 community hearings right now is that the proposed rules
3 of procedure that I have been describing, that I have
4 been submitting to you, sir, will not be applicable
5 in those community hearings.

6 Now, the next matter is the
7 commencement date. The first thing I have observed
8 is that we will formally commence if my submission with
9 respect to the rules are adopted with the overview
10 hearing which will take approximately one week to be
11 followed immediately by the first of the four sections
12 of evidence, the engineering evidence.

13 Those who have read the
14 draft submissions that I have submitted to the Commis-
15 sion will see that I have proposed a starting date of
16 October 15th. It said October 14th but that turned
17 out to be Thanksgiving Day so one day of Grace is
18 included. It should have been amended to read October
19 15th. That starting date was selected by me as an
20 appropriate one on the assumption it would be possible
21 for the responses of Arctic Gas to be available to the
22 Assessment Group earlier in time and that it would be
23 possible for the Assessment Group to make its reports
24 by September 21st.

25 As I have indicated earlier,
26 that advice is now, of course, will not be available
27 until towards the end of October.

28 I therefore propose, Mr.
29 Commissioner, that the overview hearings should commence
30 at Yellowknife, the commencement in the third week of

1 November, I don't have the date before me now, to be
2 followed immediately by the first week of formal hear-
3 ings.

4 I think I owe it to the Com-
5 mission and to the participants to indicate clearly
6 why I have selected a date that may not be well re-
7 ceived by some of the participants. You have said, sir,
8 in your preliminary ruling and I think at this stage it
9 needs hardly to be emphasized that the hearing must
10 allow full participation and a component of full
11 preparation is adequate preparation time and I know
12 that a number of the intervenors are concerned about
13 the adequacy of the preparation time so that they can
14 effectively participate and present their case. That
15 is an important consideration.

16 On the other hand, as you
17 have pointed out also in your ruling, there should be
18 no untoward or unnecessary delay because the effect of
19 delay may have important consequences for some of the
20 participants.

21 It can be said, to para-
22 phrase in this sense, if the determination of the
23 Inquiry is excessively delayed, it may in part or in
24 substance thereby deny and therefore the problem that
25 confronts the Commission in my respectful submission
26 is selecting a date for commencement which will do
27 justice to the legitimate interests of all the parti-
28 cipants including the applicant and it is only after
29 careful consideration that I have selected that par-
30 ticular date.

1 I do not hesitate to select
2 it for an additional reason because it seems to me that
3 those intervenors who are concerned about preparation
4 time may, if the division of the evidence that I have
5 proposed is accepted, find that the matters that par-
6 ticularly concern them, such as the impact on animal
7 or human environment are dealt with in the subsequent
8 stages of the Inquiry and would not, even selecting
9 this date, be normally reached until I think well into
10 the new year and so that it is possible that in my
11 respectful submission the overview could commence on
12 November 18th, 1974, the engineering evidence could
13 follow, the second section, impact on the non-living
14 environment could follow and it would not be for some
15 months until we are into the social economic question
16 which are, if I understand correctly, the primary
17 concern of some of the participants. And that scheme
18 of things will therefore or should therefore allow a
19 more extensive preparation time for those participants
20 than would exist if it was thought that the starting
21 date was November 18th, 1974, applied with respect to
22 all issues.

23 Now, Mr. Commissioner, those
24 are the submissions that I make to you. I haven't
25 read them as they are precisely set out. I do not
26 propose to do so. I think they have been reasonably
27 well circulated and there are copies available if any-
28 body wishes to see them. I don't think at this time,
29 sir, it is appropriate to say anything further about
30 them.

1 THE COMMISSIONER: Well, I
2 don't know if counsel had considered any order in which
3 they might deal with Mr. Scott's proposals but as he
4 suggested that if his proposals were accepted, it would
5 be, and I think I said this in my ruling, incumbent on
6 Arctic Gas to call its evidence first of all.

7 I think I will ask you, Mr.
8 Goldie, to respond on behalf of Arctic Gas now.

9 MR. GOLDIE: Mr. Commissioner,
10 I wonder if it might not be more useful if you heard
11 from the other ^{parties} because we have really very little
12 to add to the position we stated in Ottawa. It might
13 be more helpful to you if I was to comment on, as well
14 as Mr. Scott's proposals, the position which might be
15 taken for the first time here on the part of other
16 people, some of whom are represented by counsel for
17 the first time.

18 I am in your hands. It occur-
19 red to me that might be more useful. 12 SEPT, 1974

20 THE COMMISSIONER: Could I
21 ask you one or two questions that you might not wish to
22 answer now, you might wish to wait until this after-
23 noon. When I visited the Chik Lake Biological Site
24 Mr. ^{P.} Tabbs, the Biological Co-Ordinator of Arctic Gas
25 accompanied me and he indicated that there would be
26 additional volumes relating to the biological evidence
27 submitted very soon by Arctic Gas.

28 I don't want to put you on a
29 spot but it seems to me we should perhaps have some
30 idea about that.

1 MR. GOLDIE: My understanding,
2 Mr. Commissioner, is that those are in the same category
3 as the reports which have been filed but for the current
4 year. The dates on which those reports for this year's
5 work will be available, I am not sure yet. I can get
6 that for you and report to you on that, either this
7 afternoon, if I can get it, or such later date as it is
8 available to me.

9 THE COMMISSIONER: I wonder,
10 when I mentioned the parties appearing, I left out Mr.
11 Templeton of the Environmental Protection Board. It
12 might be useful, Mr. Templeton, if you don't mind if
13 you were to explain where the Environmental Protection
14 Board has gotten to in the development of the material
15 that it undertook to put together.

16 If I am not putting you on the
17 spot, do you mind telling us about that now?

18 MR. TEMPLETON: Mr. Commis-
19 sioner, we have prepared our impact assessment and
20 recommendations and it will be published unless we have
21 a few strikes, it is in the printer's office, at the
22 moment we hope to publish it a week tomorrow and this
23 will be available to be placed in most universities and
24 some other libraries and to of course the Commission
25 and Applicant and this is our opinion as to the impact
26 and how to alleviate it.

27 THE COMMISSIONER: Well, could
28 you give us any idea of the length of the material, how
29 many volumes, how many pages, in a very rough way.

30 MR. TEMPLETON: Volume I,

1 which is our opinion, is around 40 pages. Volume II,
2 which is the abbreviated matter, is a little smaller
3 than that and then there is a fairly large volume of
4 maps showing environmental settings and this sort of
5 thing and then the Biological Environmental Components
6 Research document which is I don't know how many pages,
7 it's about two inches thick.

8 THE COMMISSIONER: I wonder
9 if I could ask you Mr. Gibbs if you wish to say any-
10 thing about Mr. Scott's proposals now or do you wish to
11 simply reserve what you have to say until later on.

12 MR. GIBBS: I am ready to
13 speak. My comments are really technical, not having to
14 do with the scope of this Inquiry.

15 THE COMMISSIONER: Excuse me,
16 I wonder -- I have a note that you represent Foothills
17 Pipelines Ltd.

18 MR. GIBBS: Yes, sir.

19 THE COMMISSIONER: Could you
20 allay our curiosity by telling us a little bit about
21 what Foothills Pipelines is?

22 MR. GIBBS: I can start off
23 by saying the name Foothills Pipeline will be changed
24 to something more indicative of its objects. We are
25 not sure yet what it is, there has been suggestions
26 that we might call it the Beauforte Connecting Pipeline.

27 Foothills Pipelines Ltd., sir,
28 is a subsidiary of Alberta Gas Trunk Line Ltd. It will
29 not be solely an Alberta Gas Trunk Line Ltd. subsidiary
30 for very long because other companies will acquire an

1 equity position in it.

2 Foothills Pipelines Ltd., sir,
3 is the sponsor of what has been called the Maple Leaf
4 Project as an alternative to the project of Canadian
5 Arctic Gas study, Canadian Arctic Gas Pipeline Ltd.

6 The Maple Leaf proposal is
7 that the pipeline be built from the Mackenzie Delta-
8 Beauforte Sea area down into Alberta and then connect-
9 ing into existing systems, that it be wholly Canadian
10 owned, and wholly Canadian operated, and carry Canadian
11 gas to the Canadian market.

12 If it appropriate and desir-
13 able in due course that line could be extended to
14 Alaska and looped to carry larger volumes but not at
15 any time losing its Canadian identity either as to
16 operation or ownership.

17 That, sir, is what Foothills
18 Pipeline is proposing.

19 At this point in time all
20 that is really known about it is what has come out in
21 press reports. There is this Fall a hearing by the
22 National Energy Board into the supply and requirement
23 for gas in Canada. Foothills Pipeline will be filing
24 a submission at that hearing. Part of the submission
25 will be a volume giving much more detail of the Maple
26 Leave Project. It certainly will not be in as much
27 detail as a pipeline application would be. It will be
28 more of a Reader's Digest condensed version.

29 As soon as that filing has
30 taken place then the task force working on it will be

1 augmented and will commence working towards the prepara-
2 tion of a pipeline application which we hope to file by
3 June of next year with the Department of Indian
4 Affairs and Northern Development and with the National
5 Energy Board.

6 In substance, sir, that's
7 what it's all about and that is why I am here.

8 I perhaps should say those
9 items to be dealt with in the formal hearings, all that
10 evidence will apply almost equally, almost without
11 variation to the Maple Leaf Project as it does to
12 Canadian Arctic Gas because the route would be the same,
13 the impact on the environment, physical, living and
14 human would be the same and the differences really lie
15 in matters of engineering, sizing and matters of that
16 nature.

17 Now, if there is anything
18 else you want to hear about it, sir, that I may be
19 able to give you I would be pleased to.

20 THE COMMISSIONER: Go ahead
21 and tell us your views of Mr. Scott's proposals. No
22 doubt you will have other advice to say something fur-
23 ther as we go along.

24 MR. GIBBS: Yes, I suspect
25 that to happen.

26 I mentioned, sir, that I had
27 some really technical comments and the first one is
28 under the heading Production of Documents and it is on
29 page 2 of Mr. Scott's proposal.

30 I wonder, sir, if I might ask

1 you what is proposed with respect to documents in the
2 possession of third parties? Now, for example, in
3 your preliminary ruling I believe or in the Pipeline
4 Guideline there is reference to the effect of the gas
5 gathering system. I understand, sir, that there is a
6 design for such a system but it is designed for persons
7 not registered here and yet of significance to the
8 hearing, and perhaps something should be provided for
9 those type of documents in the possession of third
10 parties.

11 Also under that heading
12 "Production of Documents, Item 1" Mr. Scott suggests
13 a participant, at the request of a participant or
14 Commission Counsel a participant file a list of reports.
15 Might I suggest, sir, that perhaps that should be made
16 mandatory, that each permanent participant at least
17 file that list and that he file it in sufficient copies
18 so that the other permanent participants can have
19 copies. I can foresee otherwise the Commission
20 Counsel's offices is going to be inundated with people
21 asking for copies and the machinery is going to get
22 quite strained.

23 The next point, sir, I wish
24 to raise is under the heading on page 3, "Discovery of
25 Witnesses" where he suggests that the summary of evi-
26 dence be filed at least two weeks before it is given.

27 I presume, sir, there would
28 be some latitude there because as Commission Counsel
29 knows there may well be matters arise suddenly through
30 one witness' evidence which would lead another partici-

1 pant to conclude that he should lead some rebuttal
2 evidence and not physically have these two weeks within
3 which to file.

4 On page 4 Mr. Scott suggests
5 no cross-examination of witnesses called on the over-
6 view hearings and says he is prepared reasonably to
7 recall them. In my submission, sir, there should be
8 cross-examination allowed because even though that evi-
9 dence is classified as background evidence, it is none-
10 theless evidence and I suggest you, sir, will become
11 much more sensible if the cross-examination is conduc-
12 ted when the evidence is given than later when the
13 continuity is broken.

14 Those are all the points I
15 have.

16 THE COMMISSIONER: Thank you.

17 Mr. Scott, do you wish to
18 respond now or do you wish to wait until everyone has
19 had a chance?

20 MR. SCOTT: At least two of
21 his comments, Mr. Commissioner, are really enquiries
22 and perhaps it would be helpful to the others if I gave
23 my opinion with respect to them.

24 First of all, with respect to
25 the position relating to the production of documents.
26 Mr. Gibbs is concerned about documents in the possession
27 of third parties, a legitimate concern.

28 The scheme contemplated here
29 is to require on notice any participant, that is any
30 active continuing participant to file such a list, and

1 any person who is in that category will, if an order
2 is made by the Commissioner in support of a request
3 be required to file such a list.

4 What do we do about third
5 parties, that is persons who are not participating and
6 who do not appear but who may have documents that some
7 of the parties -- documents or reports that some of
8 the parties think are relevant or significant.

9 In my respectful submission
10 the way to deal with that problem is by the exercise
11 in appropriate cases of the Commissioner's subpoena
12 power, to simply subpoena the third party or the
13 stranger and ask him in the witness box to produce
14 whatever report or document is required.

15 I don't think there will be
16 any practical difficulties in the implementation of
17 such a scheme and they would allow for Mr. Gibbs'
18 concern that those documents would be available in
19 some fashion.

20 He next refers to discovery
21 of witnesses and requests latitude to deal with par-
22 ticular cases when it is not possible for reasons of
23 time to give two weeks notice. That is an underlying
24 assumption that I made in advancing the submission in
25 the first place and it is clearly in my judgment with-
26 in the Commissioner's power in a discretionary way to
27 permit that kind of latitude to exist in appropriate
28 cases.

29 The third matter relates to
30 cross-examination with respect to the overview evi-

1 dence and Mr. Gibbs has expressed concern that there
2 should be cross-examination and I wish merely to
3 emphasize that there will be cross-examination of any
4 overview witness and that the only reservation we have
5 is to the time at which that cross-examination will
6 take place. In our respectful submission it will not
7 be possible to conduct an orderly and efficient and
8 meaningful overview hearing if the cross-examination of
9 overview witnesses takes place immediately following
10 the principle, the giving of their evidence, but that
11 is not to say there can be no cross-examination. It is
12 It is merely to say that any parties who wish to cross-
13 examine overview witnesses will be given an opportunity
14 to do so when the portion of the Inquiry in which his
15 evidence relates is conducted so I think it can be said
16 that we all agree that there must be scope for cross-
17 examination. The reservation in the recommendation is
18 simply one of time.

19 THE COMMISSIONER: Mr.
20 Anthony or Mr. Lucas?

21 MR. ANTHONY: Mr. Commis-
22 sioner, we would specially request at the start that
23 the Commissioner request that Arctic Gas present their
24 position so we have an indication of exactly the posi-
25 tion they are taking.

26 Our understanding of today's
27 proceedings would be to consider some of the proposals
28 of Mr. Scott which was sent to us and while all the
29 parties made positions known on a prior date, this was
30 more of a private situation, and from our point of view

1 a lot of the matters which we would discuss would be
2 issues only if in fact Arctic Gas was going to take its
3 position in opposition to some of the general ideas
4 presented by Mr. Scott. I think it would facilitate
5 certainly our presentation if we had some public indica-
6 tion of the position Arctic Gas is going to take vis-a-
7 vis these specific proposals.

8 THE COMMISSIONER: Well, Mr.
9 Goldie, you said you were in my hands so would you pro-
10 ceed.

11 MR. GOLDIE: I received Mr.
12 Scott's proposals last week and as will be seen from
13 some of the comments that I make my consideration of
14 them is still developing but with respect first to the
15 commencement of the proceedings, I should point out that
16 the change in date which Mr. Scott refers to from Octo-
17 ber 21st to November 18th -- I am sorry -- perhaps I
18 misunderstood Mr. Scott.

19 Is the overview to commence
20 November 18th?

21 MR. SCOTT: Yes, sir.

22 MR. GOLDIE: So the change
23 date is from October 15th to November 18th.

24 I don't understand the rela-
25 tion of the overview to the Assessment Group's request
26 for additional information and I am at a loss to under-
27 stand why the overview couldn't commence on the date it
28 was suggested, however, it might be convenient to have
29 the overview immediately preceding the commencement of
30 the evidence from Arctic Gas and if that is the view of

1 others who are here, I have no objection to it.

2 I note in passing that Mr.
3 Gibbs' concern about cross-examination of the overview
4 is certainly one that concerns us. I was assured by
5 Mr. Scott that we would have an opportunity of consider-
6 ing that evidence and if a request was required to be
7 made, to be consulted with respect to it, I now make
8 that request. The assurance that I have from Mr. Scott
9 was that in his opinion that evidence wouldn't be of a
10 controversial nature. Certainly if it was I agree with
11 Mr. Gibbs. I am prepared to work with Mr. Scott to
12 endeavour to ensure it is of a character which would
13 provide a backdrop and which would not require cross-
14 examination for clarification or because of any conten-
15 tious position that the witness has took.

16 The request for supplementary
17 information from the Assessment Group was dated June
18 13th, it didn't reach our hands until after mid-July.
19 That is unfortunate because if it had reached our
20 hands around the date that it is dated, it would be in
21 the Commission's hands today, the answers would be in
22 the Commission's hands today. However, I can't argue
23 too strongly with respect to Mr. Scott's desire to have
24 those answers on hand before the main issue begins.
25 I think it should be fixed once and for all that the
26 date is indeed November 18th and once we get started
27 let's keep going.

28 The conduct of the hearing,
29 I am in substantial agreement with the proposal made by
30 Mr. Scott in Item 6 of his proposal. I do not under-

1 take to organize the case in precisely the term he
2 suggests and one of the reasons that I wouldn't do so
3 is that when one talks about the design of the line,
4 one really has to talk about the physical impact on
5 the environment of that line. I am talking about such
6 things as perma-frost, geotechnical considerations are
7 as much a part of the engineering and we would propose
8 leading that evidence as part of that first phase but
9 the design, the engineering, the location, construction
10 and abandonment would all be part of the first phase
11 and I stress and this is to underline the fact I am
12 in agreement with Mr. Scott in this that we will not be
13 dealing with the social and environmental and economic
14 impact at that time.

15 The evidence in that first
16 phase will really relate to the nuts and bolts of the
17 pipeline, the engineering problems associated with
18 putting the pipeline in the ground as we see it, and I
19 think this is how Mr. Scott sees it, and the evidence
20 in chief of those witnesses, the cross-examination
21 evidence of any other witnesses called in this phase
22 would be a necessary background for the witnesses who
23 will follow and will deal with the social environmental
24 and economic impact.

25 I think we are endeavouring
26 now to simply sketch things in a fairly broad outline
27 and on that point we would expect to work out the
28 details as we went along with Commission Counsel and
29 with Counsel for the other parties. I certainly agree
30 it would be desirable and in fact we will undertake to

1 do so to file in advance of commencement of each phase,
2 a list of witnesses and the order in which counsel pro-
3 pose to deal with the various subjects and a brief sum-
4 mary of the main part of the testimony of each witness.

5 Since I am going to deal
6 separately with the question of documents, I will leave
7 that for a moment. So far as the advance information
8 with respect to the evidence to be heard on each phase
9 is concerned.

12 SEPT. 1974

10 MR. GOLDIE: Mr. Scott referred to the
11 community hearings. We are in agreement with the pro-
12 posal that he has made to convene a committee of
13 interested participants to determine the appropriate
14 format for each community hearing. Mr. Carter of the
15 Northwest Territories Bar is associated with Mr.
16 Marshall and me as counsel for the applicant Arctic
17 Gas, I should say Arctic Gas as there may be more than
18 one applicant, has been a special responsibility on
19 behalf of Arctic Gas to this hearing. He will represent
20 Arctic Gas on the Committee and indeed has already had
21 some discussion with Mr. Jackson.

22 As we presently see it, each
23 community must be treated separately and I think all I
24 can say at this time we may wish to call witnesses in
25 each community dealing specifically with that commun-
26 ity. We may wish to answer evidence given there or
27 questions raised, and I think it would be of assist-
28 ance in that respect if participants in the formal
29 hearings endeavoured to advise in advance what evi-
30 dence they intend to introduce at the community

1 hearing.

2 I have already stated earlier
3 Mr. Commissioner, that participants who call witnesses
4 at the formal hearings should not recall these witnesses
5 at the community hearings except to give evidence
6 dealing specifically with that community. That is a
7 consideration that remains to be worked out.

8 I would like to deal with the
9 discovery procedure now if I might. Mr. Commissioner,
10 you referred to this at page 8 of your preliminary
11 ruling and I would like to read the statement that you
12 made there:

13 "Commission Counsel will in consultation with
14 counsel for the intervenors develop procedures
15 for discovery of all studies and reports in pos-
16 session of the Government of Canada as well as
17 Arctic Gas and the intervenors, such material
18 must of course be relevant to the Inquiry. As
19 I have said I expect at the hearing Arctic Gas
20 and the Native organizations and the Environmen-
21 tal organizations will be represented throughout.
22 All of them should be prepared to call witnesses
23 early on to discuss in a general way the studies
24 they carried out and the reports they have pre-
25 pared on matters relating to the Inquiry. Com-
26 mission Counsel will call appropriate witnesses
27 from the public service for the same purpose.
28 On cross-examination it should be possible to
29 obtain complete discovery and of course any objec-
30 tion to the production of any studies or reports

1 " to be considered by the Inquiry."

2 Now, as I understand it, it is
3 in accord with that direction that Mr. Scott has made
4 the proposals that are found in his outline under
5 Items 4 and 5.

6 I am going to read paragraph
7 1, because Mr. Scott didn't read it in full and it is
8 that paragraph which causes me some concern:

9 "At the request of any participant in the hearings,
10 or at the request of Commission Counsel, a parti-
11 cipant shall file with Special Counsel a list of
12 reports, studies or other documents within its
13 possession or power which are relevant to the
14 subject matter of the Inquiry, including those
15 for which privilege may be proposed to be
16 claimed."

17 MR. SCOTT: It should be
18 "is proposed", I am sorry, a typographical error.

19 MR. GOLDIE: I see, all right.
20 And you amended that paragraph in the course of your
21 reference to it by modifying the words "other docu-
22 ments" by the inclusion of the words "of that kind"
23 after the word "document" as I understand you. Am I
24 right in that?

25 MR. SCOTT: The use of the
26 words "or other documents" was intended to contemplate
27 other documents of that kind and if it is helpful to
28 add those words, I would see no objection to it.

29 MR. GOLDIE: I think with
30 great respect to Mr. Scott the procedure that he sug-

1 gests is somewhat cumbersome, probably over legalistic
2 and I think productive of delay. Apart from that I
3 don't have very much objection to it.

4 Now, Mr. Commissioner, in
5 order to comment on this, I think it necessary to lay
6 before you in as brief a way as possible something of
7 the legal position and I do so because of the pro-
8 duction of this word "privileged", and I emphasize that
9 I do so as a means of providing a starting point on
10 what I suggest is a more appropriate procedure with
11 respect to documents.

12 Now first one asks one's self
13 what is the nature of your inquiry and of course you
14 are sitting here by reason of an order-in-council
15 which designated you to inquire into and report upon
16 the terms and conditions that should be imposed in
17 respect of any right-of-way across Crown land for the
18 purpose of the proposed Mackenzie Valley Pipeline.
19 And as you have noted, your report is for the Minister
20 of Indian Affairs and Northern Development in consider-
21 ing what might be done under Section 19(f) of the
22 Territorial Lands Act and that section reads in part:

23 "The Governor-in-Council may authorize the
24 acquisition by any "

25 and I omit the inappropriate words

26 "pipeline company upon and subject to such terms
27 and conditions as may be deemed proper of a
28 right-of-way for a pipeline through territorial
29 lands together with such other territorial land
30 that may be necessary....."

1 Your designation as stated in the order-in-council is
2 pursuant to Section 18(h) of the Act and that section
3 reads:

4 "The Governor-in-Council may make regulations or
5 orders with respect to any question affecting
6 territorial land under which persons designated
7 in the regulations or orders may inquire into a
8 question affecting territorial land and may for
9 the purpose of such inquiry summon and bring be-
10 fore them any person whose attendance they con-
11 sider necessary for the Inquiry, to examine such
12 person under oath, compel the production of docu-
13 ments and to do all things necessary to provide a
14 full and proper inquiry."

15 Now in addition to those
16 powers set out in 19(h), which I have read, I note that
17 the order-in-council adds some others. I do not
18 attach any significance to that at this time any more
19 than I attach any significance to the fact that 19(h)
20 refers to "persons" in the plural. That is one of
21 those minor things that one picks up as one reads these
22 things.

23 Paranthetically, however,
24 I came in the course of my reading since receiving Mr.
25 Scott's suggestions last week to look at Sections 4 and
26 5 of the "Inquiries Act of Canada" and that reading
27 caused me to really wonder if you did indeed have the
28 power of subpoena. Section 4 of that Act says and I
29 quote:

30 "The Commissioners have the power of summoning

1 " before them any witness and requiring them to
2 give evidence on oath or by solemn affirmation
3 if they are a person entitled to affirm in civil
4 matters, orally or in writing and to produce such
5 documents and things as the Commissioners deem
6 requisite for a full investigation of the matters
7 into which they are appointed to examine."

8 5 reads:

9 "The Commissioners have the same power to enforce
10 the attendance of witnesses and to compel them to
11 give evidence as is vested in any Court of Record
12 in civil cases."

13 There appears to be an
14 omission if anything in your powers that is comparable
15 to Section 5 of the Inquiries Act.

16 THE COMMISSIONER: I am sorry
17 your introduction to that last section got my complete
18 attention but I must say I haven't followed you entire-
19 ly. Is it your point my power arises solely from the
20 Territorial Land Act?

21 MR. GOLDIE: And the order-in-
22 council.

23 THE COMMISSIONER: Yes, and
24 that no power to subpoena is contained there, is that
25 the point?

26 MR. GOLDIE: I should say
27 I haven't really reached a conclusion in that respect
28 in my own mind. I wanted to let you know that because
29 it has some bearing on the question of production of
30 documents but certainly you do not appear to derive

1 any power under the Inquiries Act, that is reserved for
2 someone who is acting under a Commission under the
3 Great Seal. I bring that to your attention, I will
4 refer to it in a minute.

5 I am endeavouring too, because
6 of the implication of the words "privileged", I am
7 endeavouring to note very shortly some of the legal
8 considerations and I make no point of that at this time
9 other than its possible effect with respect to the
10 production of documents.

11 Now, the question of affect-
12 ing territorial land, if I go back to Section 19(h) is
13 of course the terms and conditions that should be im-
14 posed with respect to any right-of-way that might be
15 granted Canadian Arctic Gas having regard to (a) and
16 (b) as set out in the order-in-council and that is to
17 say the social and environmental and economic impact
18 and any proposal to meet these specific concerns set
19 out in the Guidelines.

20 Mr. Commissioner, two views
21 may be taken of the nature of your inquiry. One is
22 that it is an administrative proceeding and the other
23 is that it is a quasi judicial proceeding. Now I
24 stress that I haven't come to a conclusion with respect
25 to it. The first might be appropriate if your view of
26 the order-in-council was that you are to consider what
27 terms and conditions should be imposed with respect to
28 the Arctic Gas proposal leaving for others to decide
29 whether it should proceed or whether other proposals
30 should be preferred.

1 The other view, that is to
2 say that it is a quasi judicial proceeding might be
3 appropriate if the question of whether is to be can-
4 vassed here. I say "whether" in quotation marks
5 whether it, this proposal should be the one that is
6 recommended.

7 Now I turn then to the pre-
8 liminary rulings and in those rulings you rule "the
9 Native peoples are entitled to argue that no right-of-
10 way should be granted until their claims are settled"
11 and from that I took it in your opinion this is a
12 quasi judicial proceeding affecting rights.

13 Indeed the very reference to
14 the discovery which you made in your preliminary rul-
15 ings presume I think this to be the case for reasons
16 which I will touch upon and for the purpose of what I
17 am going to say I am going to follow what I assume is
18 the view you have taken of these proceedings.

19 THE COMMISSIONER: Before you
20 do that, Mr. Goldie, returning to your first point
21 about the powers of subpoena. Doesn't the Territorial
22 Land Act say that I have the power to summon persons,
23 to produce documents, doesn't it say something like
24 that?

25 MR. GOLDIE: The precise
26 words, Mr. Commissioner, I have here, it is 19(h)
27 "affecting Territorial land under which persons desig-
28 nated in the Regulations....", if I may pause there,
29 the order-in-council used that word, designates you
30 "Regulations or Orders with respect to any question

1 " affecting territorial land may for the purpose of
2 such Inquiry summon and bring before them any per-
3 son whose attendance they consider necessary to
4 the Inquiry, to examine such person under oath,
5 compel the production of documents and do all
6 things necessary to provide a full and proper
7 Inquiry".

8 I think the point that I
9 found and I haven't resolved and I am not able to
10 assist by making a submission in respect of it is that
11 the word summon of itself does not imply the power of
12 subpoena. The Acts all seem to require that to be an
13 additional power and the person with the power to
14 summons must apply to a court of competent jurisdic-
15 tion for a subpoena if a witness fails to respond to a
16 summons.

17 The other, if I may put it
18 this way, the other interpretation is found in the
19 words "and bring before him", that may imply a power
20 of subpoena but I have not been able to find any law
21 that supports that.

22 Does that answer your ques-
23 tion?

24 THE COMMISSIONER: Yes and
25 no, at any rate I see where you are at.

26 MR. GOLDIE: I am sorry I am
27 not able to make a submission to you in terms of ordi-
28 nary assistance but this concern of mine arose only as
29 I say when I considered the full implications of the
30 question of privilege as found in Mr. Scott's proposal.

1 THE COMMISSIONER: Well, it
2 is ten after one, I think we should adjourn for lunch,
3 and I was going to ask you, Mr. Gibbs, before we
4 adjourned whether you had consented to say anything
5 about Mr. Scott's proposal that the formal hearings
6 begin on November 18th.

7 MR. GIBBS: No, sir, I am
8 content that they should begin then or earlier or
9 later.

10 (PROCEEDINGS ADJOURNED TO 2:15 P.M.)

11 (PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT.)

12 THE COMMISSIONER: We will
13 call our gathering to order again. When we adjourned
14 for lunch Mr. Goldie was in the midst of his statement
15 and I think we will ask Mr. Goldie to resume. Would
16 you carry on, Mr. Goldie.

17 MR. GOLDIE: Thank you, Mr.
18 Commissioner. I know everybody can't wait to hear
19 more about privilege. I think I arrived at the point
20 where I had said that from what I could see we were
21 proceeding on the basis particularly of a quasi
22 judicial proceeding of an adversary nature. I think I
23 said I am not sure I agree with it but that was not the
24 point here. There are two other things that pointed in
25 that direction. The first is the order-in-council that
26 authorizes you to hold hearings and this suggests you
27 should proceed on a judicial basis. The adversary
28 nature of the proceedings has received an emphasis that
29 I do not wish to overlook. Your criteria for anyone
30 seeking funds as contained in Mr. Waddell's statement

1 of August 14th a copy of which I received just before I
2 came up here contains this paragraph on page 2:

3 "Arctic Gas is supporting the construction of a
4 gas pipeline has an obvious interest in develop-
5 ing a strong case in support of the pipeline.
6 Arctic Gas is apparently well funded. At any rate
7 Arctic Gas does not make any request for funding,
8 since Arctic Gas is going to be presenting the
9 case in support of the pipeline Mr. Justice Berger
10 does not consider public funds should be made
11 available to anyone else who merely seeks to
12 demonstrate the case for the construction of the
13 pipeline."

14 Now I read that, and that is the end of the quotation,
15 when I read that, Mr. Commissioner, it seemed to me to
16 be saying that if you are to receive funds you must
17 have elected to oppose the construction of the pipe-
18 line. Without saying more I simply point out this
19 appears to emphasize the adversary nature of the pro-
20 ceedings.

21 On this assumption the pro-
22 cedure which one expects to find in proceedings of
23 this kind then involves questioning of relevance and
24 privileges and I suppose that is why Mr. Scott raised
25 the question of privilege. I want to touch very
26 briefly on this question and then move on to the ques-
27 tion of discovery as it is affected by it. Privilege
28 of course is not a question of protecting private
29 interests or anything of that kind, it is a question
30 of public policy which is very deeply imbedded in our

1 law.

2 Now if these are quasi
3 judicial proceedings then it is correct to assume that
4 there are partisans to the proceedings. One of the
5 problems with discovery is that it is applicable to
6 proceedings in court in which there are issues defined
7 by pleadings.

8 I can see four or five dif-
9 ferent -- actually more than that -- categories of
10 interest in these proceedings. First is Arctic Gas,
11 the party that seeks a declaration if you like in its
12 favour. Second there are parties who are pursuing
13 other interests during the course of these proceedings.
14 I think possibly the Native organizations should come
15 under that because they seek a declaration that no
16 construction should take place until their land claims
17 are settled. I used "declaration" because that is an
18 easy way of categorizing the apparent points of view.

19 Third we have parties who
20 conceive their role of challenging the applicant and
21 Arctic Gas in providing what they conceive to be a
22 necessary adversary balance. I think the submission
23 that was made to you in Ottawa for the Committee for
24 Independent Canada is representative of that group,
25 in fact Mr. Page stated very clearly that was one of
26 his purposes.

27 Next we have people who pos-
28 sibly support the application but reserve their right
29 with respect to the terms.

30 Fifth you might say there

1 are parties who are uncommitted who wish to participate
2 and wish to be of assistance to the Commission as I
3 follow their submission, and I think that CARP is
4 representative of possibly that group.

5 Finally, we may have another
6 category represented by Mr. Gibbs.

7 Now with some 60 or 70 inter-
8 venors, there will be variations of these groupings
9 and it is quite apparent in my submission, Mr. Commis-
10 sioner, that on some, if not all of the issues that
11 develop as we go along, there will be people in support,
12 there will be people opposed, and there will be people
13 who take no interest.

14 It is my understanding that
15 the procedure of discovery in court is to provide the
16 party who is adversary in interest some knowledge of
17 the documents which the other side may rely upon, not
18 including in this oral discovery, examination for dis-
19 covery, I am talking about discovery of documents.
20 It is not afforded people who have not by the pleadings
21 indicated that they are of an adversary nature.

22 Now whenever discovery is
23 available in the court, or in proceedings which are
24 similar, such as arbitration proceedings privilege
25 exists and this, of course, has been the subject matter
26 of a great deal of discussion in our courts and one of
27 the most recent, I am sure you are familiar with the
28 case is the judgment of Mr. Justice Macdonald in the
29 Northern Construction case. I thought I should draw
30 your attention to that because there are a couple of

1 aspects of it that may be of use to you. The citation
2 of it is 1970, 75 WWR, Page 21 -- perhaps I should read
3 from page 22, because that states it in better words
4 than I can:

5 "This is an application on the part of the plain-
6 tiff for an order that the defendant produce for
7 his inspection a large number of listed documents
8 set out in the schedule to the Notice of Motion.
9 Now the documents in this case had not been handled
10 in accordance with the Supreme Court Rules because
11 of their enormous quantities. I was informed that
12 there was approximately 83,000 documents that had
13 to be given consideration. Accordingly the par-
14 ties agreed that it was impossible for either to
15 produce an affidavit of documents. They exchanged
16 documents on an informal basis reserving the right
17 to take whatever steps they felt at an appropriate
18 time in regard to such documents."

19 Now the defendants filed an
20 affidavit and exhibited to it were categories of docu-
21 ments and the first category was described as follows:

22 "Documents made in answer to enquiries made by the
23 defendant as the agent for at the request of or
24 suggestion of its solicitor or without any such
25 request or suggestion but for the purposes being
26 laid before its solicitor for their advice or use
27 to aid the solicitor in defending the action or
28 prepare a brief, and for the purposes of litigation
29 existing or in contemplation or anticipated."

30 Now I might say his lordship

1 found that was a good claim of privilege.

2 The point I make here is that
3 if there is privilege in these proceedings then I think
4 there are, if you take, as we have been taking evidence
5 then any document which came into being for the purpose
6 of this application or any other like application is
7 privileged.

8 Now, I am going to suggest to
9 you that that is far too restrictive but I point out
10 at this point that is in my submission the logical
11 result of the progression of thought, if I may put it
12 that way, that I have endeavoured to put before you.

13 Now, if the proceeding is
14 administrative in nature and not subject to judicial
15 review, there is no discovery either in respect of the
16 Tribunal or others who appear before the Inquiry, in
17 such cases proceedings may in some cases not be held in
18 public.

19 Now I ask you, Mr. Commissioner,
20 to bear in mind that I am talking about the legal
21 position. I do so for the purpose of providing back-
22 ground to the proposals that I intend to make.

23 Now, with great respect, the
24 proposal made by Mr. Scott imposes a duty on some so
25 onerous, at least in the case of Arctic Gas, that there
26 would be a very substantial delay resulting from the
27 necessity of counsel reviewing every scrap of paper
28 that possibly could be considered as relevant to the
29 purposes of this Inquiry, and because we have to assert
30 privilege under the suggestion made by my friend of

1 course we cannot pick or choose, and the result would
2 be, in my submission, not only a costly process in
3 terms of time but it would result in virtually all of
4 the documents being subject to the claim of privilege
5 except those initial engineering considerations,
6 engineering studies which in the early instance deter-
7 mined whether the engineering aspect were feasible but
8 everything else has been aimed directly at the require-
9 ments of either the requirements of the National
10 Energy Board or the requirement of pipeline considera-
11 tions. That is the case. If you accept the proposi-
12 tion that privilege is here and must be gone into.

13 Now, that brings me, I am
14 sure you are glad to hear me say this, to the dis-
15 covery procedures which in my submission we should
16 follow. What I suggest is first a step by step
17 development which fits the needs of this proceeding,
18 by "means of the proceedings", I speak with particular
19 reference to Mr. Scott's suggestion of a phase sub-
20 mission. Instead of providing one list as suggested
21 by Mr. Scott, I suggest that when the list of witnes-
22 ses given for a particular phase, that it should be
23 accompanied by a list of documents referring to that
24 witness which would contain all those documents and
25 references referred to or used by or which the witness
26 believes touches the subject matter of his evidence.

27 Now, no question of privi-
28 lege would be raised unless in the submission or in
29 the view of the parties providing the list some
30 special question of confidence, some breach of confi-

1 dence should be raised in which case it would be a
2 matter for you or by agreement of counsel as to a
3 procedure which would safeguard that confidence without
4 inhibiting the Inquiry to deal with it. Now, this would
5 relieve counsel from the task of examining each and
6 every document to see whether it falls within the
7 category of privilege. At the same time it would
8 provide, it would answer, if I may put it that way, the
9 function of discovery which would provide some fore-
10 knowledge of what a witness is going to say before he
11 steps on the stand.

12 We are going to be dealing
13 mostly with expert witnesses and I think, in my sub-
14 mission, that the greatest assistance and the procedure
15 which would be most valuable is to provide some indica-
16 tion of what that witness is going to be relying on in
17 respect of the opinions that he expresses.

18 Now, in addition, and I speak
19 only for my client, I am not speaking about the general
20 proposition at large although I see no reason why it
21 should not apply to everybody, Arctic Gas would, as it
22 is already doing, endeavour to respond to requests for
23 additional information coming from or through Commis-
24 sion Counsel. I think any such request should be
25 funnelled through him. Of course, it may not be pos-
26 sible to comply in total with such requests but we
27 would respond and we would say why we can't comply in
28 total if that was the case.

29 Furthermore, nothing that I
30 have suggested would inhibit any party through Commis-

1 sion Counsel from making a request for specific docu-
2 ments. That goes without saying. I am going to be
3 giving you an example in a few minutes, the material
4 is available already in that regard.

5 If I understand Mr. Scott
6 correctly he said we would, Commission Staff would
7 endeavour to have here in Yellowknife a copy of docu-
8 ments that he obtained. I would certainly support
9 that and indeed I would suggest that there be a
10 central reference library of all documents related to
11 or are referred to in lists that parties would provide
12 of the evidence that a witness is going to give and
13 the documents that he will be relying on. I don't
14 think we have to do that with respect to all the public
15 literature which is voluminous, except in special
16 cases, but certainly where an expert intends to rely
17 upon unpublished material or believes that material to
18 be relevant to his evidence, then that would be made
19 available for examination.

20 Now, I want to try to give
21 you an example of what I am speaking about. I am going
22 to refer to the biological report series and the one I
23 picked out was Volume III, Part I, "Vegetation of the
24 Mackenzie Valley", Section 7 of that document which I
25 am sure everybody here has read very carefully --

26 THE COMMISSIONER: Only
27 twice.

28 MR. GOLDIE: -- has litera-
29 ture cited and it contains some 47, a good many of
30 these are published and are available, and the biblio-

1 graphy or to use the phrase the literature cited makes
2 it clear where the publication has taken place. So
3 this document which is in itself the report of an
4 expert contains in a large measure the sort of thing
5 I am talking about but there are a couple of items of
6 the kind that I was talking about a minute ago, namely
7 unpublished material. On the third page of the bib-
8 liography there are two studies by Doctor J.P. Mollard,
9 "Air Pollution Mapping Report, Volumes I, II and III,
10 unpublished data".

11 Now, if this witness is going
12 to rely upon that or refer to it or felt it was rele-
13 vant to his evidence, or if any party wanted that, that
14 that is the sort of thing that would be -- a copy would
15 be provided here in Yellowknife.

16 I said that we have to
17 develop this as we go along. I mentioned in the
18 Northern Power case there never was an affidavit or
19 list of documents. I was one of counsel in that case
20 and it would have been literally impossible to have
21 provided an affidavit of documents. I don't say
22 literally impossible, it would have impeded the pro-
23 gress of the trial to an undue degree. Experienced
24 trial counsel on both sides recognize that compliance
25 with the marginal rule was out of the question and
26 document requests went back and forth between the two
27 sides and they ranged from requests for a specific
28 document that then applied to another reference or to
29 requests for documents within a certain file. Most of
30 those requests were processed without any problem, both

1 sides knew the rules they were to apply. I might add,
2 just by way of a footnote to that, I am saying that
3 trial involved the construction of an underground
4 powerhouse for a Crown board who, of course, felt they
5 were acting in the public interest. The cost of that
6 powerhouse was something in excess of 120 million
7 dollars and the trial took over 400 trial days. It
8 would have taken much longer unless the parties were
9 able to arrive at some modification of the conventional
10 procedure for discovery of documents.

11 What I am suggesting, of course,
12 goes very much further than the conventional discovery
13 procedure. The process of discovery is already far
14 exceeded anything I have heard about in any lawsuit or
15 comparable proceedings before an administrative body.
16 I have already referred to the biological report series
17 which are original source material. These would ordin-
18 arily be privileged until the expert steps on the stand.
19 The Gemini North report is in the same category and I
20 refer to Book IV, Appendix J, which contains a 13-page
21 list of documents and any party can request the oppor-
22 tunity of having a look at any one of those documents
23 and as far as I am aware nobody has.

24 THE COMMISSIONER: They will
25 now perhaps.

26 MR. GOLDIE: Yes, well we will
27 accommodate them.

28 The source material is not
29 limited in these backup report series. Exhibit 14(f)
30 which is the "Northern Train Programme" consists of some

1 23 pages of text and some 4 appendices. Appendix "D",
2 which takes up the bulk of the exhibit is a report of
3 the Boro Institute, Northern Studies, dated October
4 1972. Now, part of the report of the Institute itself
5 is a description by the Institute of some other studies.
6 We may be in no better position than anyone else to
7 supply copies of those studies and may neither rely
8 upon them or may not even be able to see them, but I
9 just cited that as another example of material that is
10 available or knowledge of the material that is avail-
11 able and really, Mr. Commissioner, what I am getting
12 at, there is much material available now and what we
13 will propose to provide is the relevant material in an
14 orderly fashion to enable us to make some progress.

15 You, Mr. Commissioner, are
16 well aware of the criticism that has been made of the
17 ordinary trial processes, the techniques as an expedi-
18 tious means of settling complex technical issues.
19 The criticism, I think, centres around the epithotic
20 nature of the trial process. It is a one track pro-
21 cedure in which each step follows the other. Many
22 commentators have felt there should be necessary
23 reform incorporating a multi-step process in which a
24 number of problem solving procedures occur independen-
25 tly rather than epithotically.

26 I say, with great respect,
27 to ask my client to produce a list of the conventional
28 kind before any evidence is heard is to ask what was
29 dismissed as impossible in the Northern Power case,
30 and furthermore, with great respect, is unimaginative,

1 it does not adapt the necessities of the day, the
2 requirements of the proceedings before you.

3 THE COMMISSIONER: Excuse me,
4 Mr. Goldie, in the Northern Power case you said that by
5 agreement there were no Affidavit of Documents supplied
6 but there were lists -- did you say that?

7 MR. GOLDIE: No, no, what
8 happened was, almost simultaneously counsel on both
9 sides realized there was an awful problem involved in
10 attempting to cope with the Rules and the first thing
11 that was done was to say "Well, now, what are the
12 things that each of us has in common that are going to
13 be produced?" And there was a very large volume of
14 correspondence and without listing that each side said,
15 "Well, show me what you've got and I'll show you what
16 I've got, and we will agree that is the correspondence."
17 And then as we went along we really got down to the
18 proposition of saying, a document request, and saying,
19 "Please provide all the documents within the file of
20 of Mr. XYZ relating to", and they would either get a
21 refusal to that or they would say, "Yes, come on over
22 and inspect the file." But if a refusal was given,
23 the statement would be made "No, that falls within the
24 category that we say is privileged", and, of course,
25 the judgment of Mr. Justice Macdonald arose out of a
26 dispute on the categories of privilege, and I think
27 there were four or five categories, and he ruled a
28 number of them as not being susceptible to privilege.
29 The one I read to you is the one in my submission is
30 analagous to the problem we have here.

1 Now, if you feel, Mr. Com-
2 missioner, that the proposal that I am making on behalf
3 of my client is insufficient, then I think, with
4 respect, you should call for a fuller submission then
5 on the points that I have raised about the nature of
6 your Inquiry and the powers that you have. I said that
7 I hadn't reached a conclusion with respect to subpoena
8 powers and they do have a bearing with respect to
9 documents.

10 I think that in one view
11 that if a subpoena power exists, it exists for the
12 purpose of requiring people to bring before you at a
13 hearing held for the purposes of the Inquiry, documents
14 by a witness named in the subpoena ducus tecum. I see
15 nothing that provides for a power of discovery which is
16 a pre-hearing production.

17 Now, I hope I am making my-
18 self clear, what I am proposing is an endeavour to
19 provide this in the most culpable manner that I can,
20 but I must say that what Mr. Scott's proposes are so
21 great that I must say to you that we resist them and
22 resist them for not just legal reasons but I have
23 endeavoured to place before you the legal considera-
24 tions but there are questions to be looked at for
25 reasons of a practical matter.

26 It is for that reason I say
27 if you do not accept my submission, that you should
28 possibly hear a fuller discussion of this point. I
29 apologize again for not being able to prepare an argu-
30 ment in the usual advocate fashion.

1 I have only one or two other
2 observations to make, Mr. Commissioner, but I don't
3 know that they are of very great importance at this
4 time.

5 THE COMMISSIONER: Before
6 you go on, Mr. Goldie, as I understand it, you are
7 saying to me that Arctic Gas objects to Mr. Scott's
8 proposal on its merits essentially on the ground that
9 you say it would be impractical to seek to apply his
10 proposals to your client Arctic Gas.

11 Then you say that anyway you
12 think it may well be beyond the power that I have under
13 the Statute to establish a rule that require your
14 client to produce relevant documents in the way Mr.
15 Scott proposes.

16 I think that subject to what
17 counsel for everybody else says, that it would be
18 better, perhaps tomorrow, if there were to be a full
19 discussion about the extent of my power so that it
20 seems to me the first consideration is "What do I
21 have power under the Order-in-Council and the
22 Statute to do?" It doesn't make an awful lot of
23 sense to be scratching around Mr. Scott's proposals
24 and should I accept it, you are then going to say,
25 "You don't have the power to impose a rule like that
26 anyway."

27 Perhaps counsel might all
28 give that some thought and if the point is still in
29 contention by tomorrow morning, it can be examined in
30 detail then.

1 MR. GOLDIE: I would hope,
2 of course, that everybody would enthusiastically en-
3 dorse what I am proposing.

4 THE COMMISSIONER: Well, maybe
5 they will.

6 MR. GOLDIE: I am anticipat-
7 ing they will.

8 May I comment on your sugges-
9 tion, Mr. Commissioner, that we debate this further
10 tomorrow. With respect, the time I had raised so many
11 questions I wasn't able to answer them all to my own
12 satisfaction, to make it clear.

13 I am having several memoran-
14 dum prepared for me in Vancouver on some of these ques-
15 tions. My suggestion would be that we schedule a
16 hearing in close proximity to a good law library within
17 the next ten days or so, if it is the wish of those
18 here to explore those questions which I am hopeful it
19 is not necessary.

20 Might I conclude?

21 THE COMMISSIONER: Yes.

22 MR. GOLDIE: I may have mis-
23 understood what Mr. Scott said about the procedure of
24 the formal hearing applying to some people and not to
25 others, and I stand to be corrected, but if there is a
26 suggestion that some people or some participants being
27 subject to some rules and some not being subject to
28 some rules, I have very great misgivings about that.
29 I won't say anything more about that but to say anybody
30 who wishes to give evidence at the formal hearings

1 should give evidence on the same basis as everybody
2 else, but I may have misunderstood what Mr. Scott said
3 in that regard.

4 You asked me a question about
5 the biological report series for this year and over the
6 noon hour I got a little more information on that. I
7 can't provide you with the date but I can say this,
8 this is a continuing series based upon work which
9 Arctic Gas has continued for several years and expects
10 to continue to and through the commencement of con-
11 struction, if a Certificate of Public Convenience and
12 Necessity is awarded. Therefore we would anticipate
13 there would be such volumes issued every year as that
14 is the procedure which we have followed. A number of
15 volumes will be issued very shortly but others would
16 come from time to time.

17 I think the point I am making
18 is, and I don't know whether this was in your consider-
19 ation when you asked me the question -- if that was
20 regarded as a class of document that had to be in hand
21 before a hearing could commence, then I think I would
22 wish to instruct my client to stop work immediately
23 because otherwise we would be just going on from year
24 to year, but I perhaps misunderstood your question.

25 THE COMMISSIONER: No, I
26 didn't understand it was yearly or an annual document
27 produced on an annual basis. This is not Mr. Stabb's
28 fault, I misunderstood, I thought there were additional
29 volumes that would come to ground and not discussed at
30 all in the material already filed.

1 MR. GOLDIE: No, I don't
2 understand that, I think it is this year's study of the
3 kind that has been done in years past.

4 I think the question with
5 respect to the Environmental Protection Board has been
6 answered. Mr. Templeton is here. I imagine you are
7 aware, Mr. Commissioner, Arctic Gas paid for that but
8 we have no control over it obviously and in fact since
9 the Board has become an intervenor in these proceedings,
10 we will feel free to cross-examine or lead evidence to
11 the contrary.

12 THE COMMISSIONER: Well, can I
13 ask you a question before we go on? Mr. Scott has sug-
14 gested that the hearing be broken down into four
15 phases, the first phase to be concerned with engineering
16 evidence. You must have given this some thought, Mr.
17 Goldie.

18 If the hearing relating to
19 engineering evidence were to commence presumably you
20 would call your witnesses, they would be cross-examined
21 presumably by counsel for Alberta Natural Gas Trunk, by
22 counsel for the Canadian Arctic Resources Committee, the
23 Native organizations, and by Commission Counsel and then
24 presumably Alberta Gas Trunk would call its engineering
25 evidence, there would be cross-examination of its wit-
26 nesses. I assume the Canadian Arctic Resources Com-
27 mittee and the Northern Assessment Group would call some
28 witnesses relating to engineering evidence. The Native
29 organizations might not, Commission Counsel might then
30 call representatives of the Assessment Group, representa-

1 tives of the Public Service -- not representatives but
2 employees of the Government of Canada, there would be
3 cross-examination, the Environmental Protection Board
4 might -- counsel for all those parties might call wit-
5 nesses from the Environmental Protection Board as well.

6 Do you have any idea of how
7 long that first phase of the Inquiry would take, how
8 many days, how many weeks, how many months. We are all
9 guessing but you may be in a better position than any
10 of us to make an accurate guess.

11 MR. GOLDIE: Mr. Commissioner,
12 I can safely say my mind is uncluttered with any know-
13 ledge of what Mr. Gibbs' case is.

14 MR. GIBBS: Mine too.

15 MR. GOLDIE: The way we
16 thought this evidence was going in, is that we would
17 make considerable use of panels, that is to say we
18 would have three or four people who would be able to
19 answer every conceivable question on that particular
20 point such as the location of some compressor station
21 to pull something out of the air. We thought that by
22 using panels, that the evidence in chief on this phase
23 might take a week to ten days. Now, it might be con-
24 siderably shorter, I can't say, but that is the sort of
25 dimensions that we see the Arctic Gas evidence in chief
26 on this particular engineering phase. I would not like
27 to hazard a guess about cross-examination.

28 THE COMMISSIONER: And then
29 witnesses for all others on engineering matters, so
30 Phase I, if a miracle occurred, could take only a month

1 and might well take two months.

2 MR. GOLDIE: I think it would
3 take what the lawyers like to call the Christmas break
4 as a practical matter.

5 THE COMMISSIONER: If it
6 started today.

7 MR. GOLDIE: I would like to
8 say I have got my witnesses here --

9 MR. SCOTT: Mr. Commissioner,
10 before we proceed to the next submission, Mr. Goldie
11 expressed concern about my submission about the appli-
12 cability of these rules if taken one way would render
13 him content, and if taken another way would render him
14 some disagreement. As he phrased it perhaps. I would
15 like to make it clear that I don't think I was misunder-
16 stood at all and in fact he apprehended precisely what
17 I meant, that the proposed Rules would apply to the
18 major continuing participants, that is not, of course,
19 a fixed group in our submission, and the test of whether
20 an individual or an organization is a continuing active
21 participant in the proceedings will be determined when
22 a notice or application to file a document has been
23 served upon him. If he resists it, he may resist it
24 on the grounds "Well, I am just going to be there for
25 one day, what are you worrying about?" So it is true
26 to say it was our intention that the rule should not be
27 as Mr. Goldie would have it universally applied. We
28 think that is very important from the point of view of
29 those individuals and organizations who are concerned to
30 take only a limited role and should not be artificially

1 hampered or restricted by the application of rules
2 which are meaningful and significant to parties that
3 would be here day after day, but if there was in fact
4 any misunderstanding, and I somehow doubt it, it might
5 be helpful if he had his submissions on that aspect
6 now.

7 MR. GOLDIE: Yes, I would be
8 glad to if it is your wish.

9 I wasn't thinking so much
10 about the list, you now know my views on that, you
11 intended a witness who would be able to give evidence
12 without being cross-examined or without being subject
13 to the ordinary rules of relevant material.

14 MR. SCOTT: It wouldn't be
15 the intention, in my submission, that he would be
16 examined without the right of cross-examination. I
17 would concede that. I would like to reserve on the
18 question of whether the Rules respecting Hearsay should
19 be applied to all witnesses. I am inclined to think it
20 should not.

21 What I am concerned about is
22 that I don't think that every person who comes forward
23 and wishes to give evidence, or make a submission,
24 should be bound by the general principles which apply
25 only to the major parties in terms of their actual
26 physical commitment, and have them two weeks in advance
27 give a summary of their evidence. I think that would
28 severely inhibit the right that we desire to encourage
29 in the citizens in the community to come forward and
30 say what they want to say and giving what facts they

1 want to give to the Commission on these important
2 matters.

3 MR. GOLDIE: Yes, I, of course,
4 emphasize my thrust related to the formal hearings.
5 The community hearings, of course, are an entirely
6 different proposition. I am not talking about the
7 ordinary Rules applying there. We are clear on that,
8 but I have very grave misgivings about two sets of
9 ground rules, if you like, for witnesses but I think
10 this is one of those things that you make a submission
11 when the witness is called, and if he wants to give
12 evidence on something of which he has no personal
13 knowledge, a submission is made at that time and it is
14 up to the Commission to rule on. It is not one of
15 these things that can be debated in the abstract very
16 well. I just want to go on record if it was intended
17 to have a different set of ground rules for one set of
18 witnesses over another, then I have grave misgivings.
19 I didn't want to be bound by silence at this hearing.

20 THE COMMISSIONER: I think we
21 will leave that -- Mr. Lucas or Mr. Anthony?

22 MR. ANTHONY: Mr. Commis-
23 sioner, if I may be permitted to start and Mr. Lucas,
24 who you are familiar with and who has appeared before,
25 also has a presentation to make on behalf of CARP.

26 We would like to make a few
27 comments with respect to both procedures outlined by
28 Commission Counsel and the format and then Mr. Lucas
29 will deal with the issue of the timing of the hearing.

30 With respect to the procedure,

1 our general view is that the decisions made now with
2 respect to procedure to be followed are vital and
3 crucial in the hearing in that the form adopted will
4 reveal both the attitude of the Inquiry and the oppor-
5 tunity for real effective participation which will be
6 of real assistance to the Commission. Our general
7 position is that we are in agreement with the type of
8 procedure suggested by the Commission Counsel, what
9 will follow will be comment on a number of specifics.
10 The issues that we do not deal with this time are
11 because we are in agreement with Commission Counsel's
12 proposal, and we are, of course, in full agreement with
13 his basic principle that the procedure must be such as
14 to ensure a fair and full enquiry and also that what-
15 ever procedure is adopted will be the procedure best
16 suited for this type of an Inquiry.

17 I think it is important right
18 at the start to put our view across that a procedure
19 based on an adversarial context is not appropriate for
20 this type of a hearing. This goes to the question such
21 as two types of rules or the question of community
22 hearings as distinct from the formal hearings, and I
23 think whether we view this as judicial or quasi
24 judicial or administrative, I don't think goes to the
25 root of those considerations. The whole spectrum of
26 attitudes and approaches will most likely be presented
27 at this hearing and in many ways this is a unique
28 forum that has an opportunity of developing unique
29 techniques, unique rules for dealing with what is a
30 unique situation.

1 The case and the problem re-
2 ferred to by Mr. Goldie, while perhaps relevant in a
3 situation bound by Supreme Court Rules, do not necessar-
4 ily preclude this hearing given its powers both in the
5 Order-in-Council, in particular in the Order-in-Council
6 to adopt the type of procedure that are most suited to
7 this unique situation.

8 I think that this type of
9 consideration finds itself expressed in a number of
10 particular areas. Mr. Goldie has dealt with some of
11 them, the question of evidence and disclosure and
12 privilege, and I think perhaps I should direct my mind
13 first to these sorts of issues because Mr. Goldie has
14 referred at some length to them.

15 I agree that the procedure
16 cannot be what we term formalistic or legalistic and
17 bound not only with the restrictions of a certain legal
18 practice, but the attitude also.

19 Now, there was hinted this
20 morning and presented a little more forcefully this
21 afternoon, some suggestion of the question of the right
22 to subpoena and others expressed this afternoon which
23 goes to the very basis of the whole reason for this
24 Inquiry, maybe submitted by Mr. Goldie and Arctic Gas
25 as a challenge to the whole basis upon which this
26 hearing is operated. If that is the situation, and if
27 in fact that is going to be presented by Arctic Gas,
28 that submission, we would at this time, with respect,
29 request that a hearing be convened simply to deal with
30 those issues, that such a hearing be held in Yellow-

1 knife in sufficient time to enable the various parties
2 to prepare legal argument in dealing with those issues.

3 Now, I think at this stage we
4 are prepared to deal with Mr. Scott's proposals on the
5 basis that they were presented and in an assessment of
6 the scheme as he presented it. If we wish to get into
7 argument with respect to the right to subpoena and so
8 on in the context that Mr. Goldie presented it, we
9 merely request the opportunity to have a hearing at
10 some later date.

11 THE COMMISSIONER: So you
12 agree with Mr. Goldie about dealing with the question
13 of the extent of my power at a later hearing specifi-
14 cally for that purpose?

15 MR. ANTHONY: We would be
16 prepared to assist in such a hearing at a later date
17 and we would respectfully suggest it would be here in
18 Yellowknife.

19 Dealing with the question of
20 production of documents, I think it is essential too,
21 we recognize that with respect to the synopsis, it is
22 quite limited in the sense that it is to be prepared
23 two weeks before the witness is presented and also
24 because obviously it is necessary it be made in a
25 flexible way, as I believe Mr. Scott recognized in his
26 reply to Mr. Gibbs, and because also, of course, there
27 is no verbal discovery of witnesses, again a very
28 important distinction in the situation we have here
29 and the situation we have in the traditional adversary
30 context of a lawsuit, that there is therefore a very

1 different role to be played in this question of pro-
2 duction of documents.

3 Very obviously the basis of
4 a lot of the cross-examination, a lot of the evidence
5 to be presented, will arise out of material that is
6 now available and that must be researched. I think
7 this was recognized at the start in early meetings with
8 respect to the creation of the Northern Assessment
9 Group and other such organizations. At this point in
10 time we have the situation where one party to the
11 hearing has a vast amount of literature available to
12 it and can therefore state a position with respect to
13 proceedings on that basis.

14 Most of the other parties in
15 there have only now a position to make use of this
16 sort of information. We start off at two very dif-
17 ferent procedures. As a matter of fact, if the
18 Rules of Privilege and the right to exclude documents
19 suggested at one stage were applied, there would be in
20 fact no documentation that groups such as CARP could
21 present because they would all be subject to a claim
22 of privilege, since in fact all the documents will be
23 prepared in anticipation of this hearing. So obvious-
24 ly a different form of discovery procedure with re-
25 spect to documents is required.

26 Our proposal, we would sug-
27 gest, would be that the order that Mr. Scott has pre-
28 sented with respect to documents be basically that as
29 required in an ordinary subpoena ducus tecum. In
30 other words, that a party be required to produce all

1 documents in its possession or power or in the posses-
2 sion or power of its agents or other parties on its
3 behalf, and that would include such people as consul-
4 tants that are relevant to this Inquiry. In that
5 sense we suggest within the terms of reference of this
6 Inquiry.

7 Now, obviously Mr. Goldie
8 made mention of the point that in the Northern Power
9 Commission case, for example, they could not produce
10 an Affidavit of Documents and recognized that sort of
11 problem and said there was the same situation here.
12 Of course, there are different situations in that cir-
13 cumstance in the sense that that was an ongoing opera-
14 tion involved which is not quite the same situation as
15 here, but in any event we are prepared to give such a
16 list if possible that can be completed and presented
17 without the necessity of a formal affidavit.

18 The principle that we wish
19 to apply is the principle of full and voluntary dis-
20 closure of all documents that are relevant to the
21 Inquiry.

22 I think we can proceed on
23 that basis because of the fact that we are not in an
24 adversarial process. There is not another side who has
25 an onus to prove its case.

26 THE COMMISSIONER: Do you
27 agree with Mr. Scott's proposed arrangement of the
28 hearing into four phases?

29 MR. ANTHONY: Well, we agree
30 with the general concept. We have some question as to

1 the topics themselves and we also wish to make clear,
2 and Mr. Lucas will be dealing a little more specifi-
3 cally with it, the question of the timing. We get
4 some indication from what has been said that there is
5 a possibility, for example, of starting without certain
6 documentation being placed. This, of course, is one
7 of the ideas proposed by Mr. Goldie of the phase
8 documents which again is a position which we would
9 disagree with that it is not in fact a realistic way
10 of proceeding.

11 If I can perhaps deal with
12 that in the context of your question, I believe the
13 suggestion would be that as the synopsis comes in, it
14 encloses a list of documents -- am I correct in that --
15 well, I think that from our point of view, that it
16 would not --

17 MR. GOLDIE: Related to each
18 witness.

19 MR. ANTHONY: Yes -- related
20 to each witness -- our submission is that in fact it
21 would not be an adequate way of ensuring that the
22 relevant issues can be brought out as a process of
23 the evidence or cross-examination.

24 First of all, of course, we
25 would suggest in most circumstances there just wouldn't
26 be sufficient time to adequately examine the report.
27 It would certainly, I think, be impossible to get any
28 further evidence or prepare people in the field to
29 examine some of the evidence presented in these re-
30 ports. In other words, if a report was presented to a

1 hearing or in advance by two weeks, there just wouldn't
2 be sufficient time to properly digest the report and to
3 prepare witnesses to contradict the report, if in fact
4 that was the situation, or to properly prepare for
5 cross-examination on the basis of either independent
6 evidence or other reports that would be available.

7 Similarly, I think we then
8 have a very serious problem of documents being presen-
9 ted while relating to a specific point presented far-
10 ther on in the hearing, are in fact very relevant to
11 some earlier phase of the hearing. In other words, if
12 a witness is referring to a certain section of a
13 report dealing with the environmental impact with
14 respect to the people, that report may also have very
15 important information that relates to some earlier
16 stage of the hearing. So, I think that there is a
17 necessity that the complete picture be obtained as far
18 as possible before moving into the question of the
19 formal hearing.

20 Finally, dealing with this
21 issue of course what is suggested is that the person-
22 nel, whether it be the experts, consultants or expert
23 witnesses, would be required both to consider and
24 review the reports that have been revealed and be
25 present at the hearing to advise counsel with respect
26 to cross-examination and in most cases this would be
27 an impossibility for most of the participants at these
28 hearings, to have expert evidence, shall we say, both
29 available to examine the reports as they are arriving
30 from time to time some two weeks before the hearing,

1 before that witness is called, and similarly be there
2 to assist counsel in cross-examination at the ongoing
3 hearing. I think the result would be that in fact
4 there would be no saving of time, following this phase
5 list procedure as compared to the procedure suggested
6 by Mr. Scott, and in which we concurred in, that the
7 documents to be relied on by the witnesses, and all
8 the documents that are relevant to the hearing be
9 presented at the earlier stage so that they can be
10 reviewed before the actual formal hearings commence.

11 Mr. Goldie also mentioned
12 the problem which he recognized of a vast number of
13 documents, and our suggestion in this regard would be
14 in many circumstances it would be appropriate to
15 merely identify the class and type of document, where
16 the document is available, and provide reasonable
17 access for other parties to examine the document.

18 This would then in many ways
19 put the onus on the other party, but give them an
20 opportunity of examining a vast amount of material,
21 what is relevant can be brought out, and presented
22 for the hearing. Notice can be given to the party
23 that these reports within the class we view as being
24 relevant and would like to be presented as part of the
25 list of that party. This would overcome some of the
26 problems where there is a vast amount of material,
27 some of which may or may not be relevant according to
28 the particular party's point of view.

29 I think in addition to the
30 procedures generally outlined by Mr. Scott, that there

1 should be some procedure established for appeal to the
2 Commission in the situation where the participants
3 themselves cannot agree on whether or not a document
4 should or should not be produced to the hearing. I
5 think that in such a case, that the party claiming
6 privilege, plus any part objecting, plus the Commission
7 Counsel would appear before the Commission and argue
8 the question of whether or not the document should or
9 should not be privileged. I would think that the
10 right of subpoena, which is retained by the Commis-
11 sioner, would be sufficient to ensure that all documents
12 deemed relevant were in fact presented to the Inquiry.

13 I would hope that some pro-
14 cedure could be worked out whereby once it was agreed
15 as to the type of document that were to be presented,
16 then in fact they could either be consolidated in some
17 book form or presented in some way as an exhibit to the
18 proceedings to prevent the necessity of anyone being
19 put to strict proof of the document, and therefore will
20 shorten the proceedings so that the real issue can be
21 dealt with.

22 I think, too, that there
23 should be some procedure established whereby any party
24 omitting to present as part of its evidence any report
25 or document considered to be relevant, that such a par-
26 ticipant, after a reasonable notice to Commission
27 Counsel and the other parties, request that document
28 and that evidence be presented at the hearing. I think
29 in terms here of situations where a report may be
30 available to all the participants and deemed relevant,

1 for example, by one party and not by the party in whose
2 possession the report presently is, this would enable
3 that party to request the party who was holding the
4 document to have somebody there who could be questioned
5 on the report and be subject to cross-examination.

6 Again, I think the power of
7 subpoena retained by the Commission would be sufficient
8 to ensure that that form could be adopted.

9 With respect to the question
10 of format itself, the format suggested by counsel of the
11 four phase programme is generally satisfactory with
12 respect to the progression required to have the matter
13 properly heard. I think though that we would hope that
14 consultation would be followed throughout, we are con-
15 fident in fact that will happen and enable a lot of
16 particular questions we may have to be resolved.

17 One of the major elements of
18 research, however, goes to the question of implementa-
19 tion, the question of ongoing monitoring and so on.
20 The topic, as suggested by Commission Counsel, are in
21 fact an assessment of what we call impact, and this
22 impact, of course, is based on a number of assumptions
23 and I think that the scope of the Inquiry would be
24 unnecessarily limited if there was no opportunity to
25 look at questions both of control and techniques of
26 monitoring dealing with both the construction and
27 operation. In other words, what controls there are
28 dealing with the question if these assumptions do not
29 prove to be accurate.

30 I think, too, that the form of

1 the structure does not provide a provision for an overall
2 synthesis of the hearing. While we will be dealing
3 with various particular issues in isolation, there is,
4 I think, a need in the structure for an overall assess-
5 ment to be made. I would think that the recommenda-
6 tions that this Commission will be required to present
7 would be on a basis of either an area assessment, or
8 something in that nature, and I would think that the
9 necessity would be therefore to have the structure
10 varied to allow that sort of a synthesis.

11 In dealing with this ques-
12 tion of area, I think, too, it would be a mistake to
13 suggest that this can be accomplished in the informal
14 hearing, and I would think that the community hearings
15 themselves have a very valuable function to perform,
16 and the function could be, I think, could be thwarted
17 if it became rather technical or if we attempted to get
18 these area assessments at the community level. I think
19 they should be presented at the formal hearings and I
20 believe Mr. Goldie, in his presentation, suggested they
21 would want to be in a position to call witnesses to
22 deal with the questions of the effect on a particular
23 community or particular area. I think that this sort
24 of thing should be part of the formal hearing and the
25 programmes that are outlined, as presented by Mr. Scott,
26 will be varied to provide that sort of input.

27 MR. GIBBS: I wonder if I
28 could interrupt and ask to be excused, I didn't anti-
29 cipate the hearing would take this long. Foothills
30 intends to be a continuing participant in these hear-

1 ings, but I can't continue today without an undue
2 hardship on counsel.

3 MR. GOLDIE: Ask for an
4 application for funding and get a room for the night.

5 THE COMMISSIONER: Certainly,
6 Mr. Gibbs, you are excused, sir. You had better get
7 used to the idea that these things take awhile.

8 MR. GIBBS: Clearly so.

9 THE COMMISSIONER: The rest
10 of us are veterans, we started in in the spring.
11 Thank you very much for coming.

12 MR. ANTHONY: I have attempt-
13 ed to deal rather quickly with a number of points be-
14 cause I think they relate more correctly to the ques-
15 tion of the timing of the hearing, and Mr. Lucas will
16 present the position of CARP with respect to this ques-
17 tion, and I think a lot of the points I have raised
18 will be expanded upon with a little more relevance.

19 MR. LUCAS: Mr. Commissioner,
20 I am going to be dealing exclusively with the question
21 of timing. The nature of the subject, I think, makes
22 it imperative, however, that some of the suggestions
23 that Mr. Goldie made this afternoon be dealt with in
24 this context as well.

25 I can begin by saying quite
26 plainly that the Canadian Arctic Resources Committee
27 does not find the proposal of Commission Counsel re-
28 garding the commencement of the hearing acceptable.
29 With regard to the overview hearing, that is the tim-
30 ing of the overview hearing, we have no strong view,

1 however we recognize that it is logical in view of the
2 fact that their function is to lay groundwork for the
3 main hearing and introduce the issues. In that light
4 it is logical that the overview hearing ought to short-
5 ly precede the formal proceedings. Again we have no
6 strong feelings on the timing of the overview hearing.

7 In making the submission of
8 Canadian Arctic Resources Committee with respect to
9 timing, it is necessary unfortunately to recount a
10 little history and in particular to explain the genesis,
11 nature and function of this thing known as the
12 Northern Assessment Group, and I should explain immed-
13 iately that I am not referring to the Government
14 Assessment Group that Mr. Scott referred to this morn-
15 ing.

16 The one I am referring to is
17 the Northern Assessment Group, NA, if you like.

18 The Northern Assessment
19 Group originated in discussions in Ottawa following
20 the preliminary hearings that were held there in the
21 early part of May, and some of the history is already
22 to be found in the transcript of the preliminary
23 hearing held on May 8th.

24 At that time it was agreed,
25 following a meeting by the major environmental inter-
26 venors, at that stage, as well as the major Native
27 groups, that a scientific assessment and review group
28 should be established under the direction of the
29 Canadian Arctic Resources Committee, to conduct a
30 detailed technical review of the Arctic Gas application,

1 particularly related to environmental considerations
2 and to make the resulting review data available to
3 these various member groups, and briefly these were
4 on the environmental side, Pollution Probe, The
5 Canadian Nature Federation, The Federation of Ontario
6 Naturalists, The Canadian Environmental Law Associa-
7 tion, SPEC, Canadian Scientific Pollution and Environ-
8 mental Control Society, Vancouver, and The Canadian
9 Arctic Resources Committee.

10 The major Native groups in-
11 volved in those meetings were the Committee for the
12 Original Peoples Entitlement, The Indian Brotherhood
13 of the Northwest Territories, The Metis Association
14 of the Northwest Territories, The Council for the
15 Yukon Indians, and at that time formal presentation
16 of the idea of a Northern Assessment Group was made
17 to the Commission and a request for funding for this
18 purpose was made at that time.

19 In addition, it was recog-
20 nized that the scientific and technical review of the
21 Northern Assessment Group must be coordinated with the
22 socio-economic study and review of the applicant's
23 supporting documents that would be undertaken by the
24 Native groups.

25 Now, the result of all this
26 was that the application for funding was pursued and
27 ultimately the Department of Indian and Northern
28 Affairs made funds available to the Commission for the
29 purpose of funding such an environmental review.

30 Finally, I should make it

1 clear that the Canadian Arctic Resources Committee
2 and Northern Assessment Group are two completely dif-
3 ferent things. The party in this Inquiry is the
4 Canadian Arctic Resources Committee, the Northern
5 Assessment Group is not and will not be a party to
6 this Inquiry. It is merely a resource agency, a
7 source of information to the groups that I have men-
8 tioned.

9 However, it can't simply
10 orbit on its own, it has to be run and administered
11 by someone, and the organization that has taken that
12 on is Canadian Arctic Resources Committee, and as a
13 result CARP will undertake, and for CARP Mr. Anthony
14 and I will undertake to provide any legal needs that
15 the Assessment Group may require in the course of the
16 Inquiry. I am thinking, for example, any obligation
17 to file list of documents or produce documents. We
18 will undertake to see that is done on behalf of the
19 Northern Assessment Group, emphasizing however that
20 the Northern Assessment Group is not a party formally
21 to this Inquiry.

22 Now, the funds for undertak-
23 ing this review became available to the Northern Assess-
24 ment Group on or about September 1st. The study team
25 has been established under the direction of Doctor
26 John Spence and a team of principal investigators has
27 been engaged. A number of tasks have been outlined
28 and I won't go into them right now in any detail.
29 However, it is possible at this time to provide some
30 indication of how long these tasks will take.

1 First of all, the various
2 tasks are under direction of different principal
3 investigators and they involve different kinds of
4 review, and different extent of investigation beyond
5 the Arctic Gas application itself, and as a result
6 the time necessary to complete the various tasks will
7 differ somewhat.

8 Just to take a couple of
9 examples, the basic task being undertaken by the
10 Northern Assessment Group is a complete analysis of
11 the specific environmental effect of the Trunk Gas
12 Pipeline and gas gathering lines. The principal
13 investigator for that study has advised the Canadian
14 Arctic Resources Committee that that study will be
15 completed on or about the 31st of January, and that
16 is a minimum period required to complete that review.

17 Another important task that
18 has been undertaken by the Assessment Group is a
19 review of the impact of ancillary facilities and
20 operations pertaining to the pipeline. The principal
21 investigator for that task advises CARP that the time
22 required for that study will make the report available
23 at approximately the end of February 1975.

24 So taking those two exam-
25 ples, it would appear that the basic technical review
26 that has been undertaken by the Northern Assessment
27 Group will be completed between January 31st and the
28 end of February 1975.

29 Now, there are several
30 limiting factors that might cause this work to take a

1 little longer. I will just indicate a couple. First
2 of all, the sequential nature of the tasks that are
3 being undertaken. Some of the review related to
4 ancillary facilities, for example, depend on the
5 review of the environmental impact of the Trunk Pipeline
6 itself and really cannot get fully underway until the
7 review of the pipeline impact is at least well underway.
8 That is one of the problems.

9 Another is the fact that many
10 of these review tasks simply cannot be completed until
11 there have been full discovery of documents, both in
12 the possession of Canadian Arctic Gas and in the
13 possession of other parties, and perhaps in the pos-
14 session of Government departments. So, in other
15 words, discovery of documents, first of all, through
16 any discovery procedure that is likely to emerge from
17 this Inquiry, and I might note that if Mr. Goldie's
18 proposal is adopted, that time period for disclosure
19 of these reports is likely to be considerably longer
20 and, as a matter of fact, I cannot resist observing
21 that Mr. Goldie's concern about discovery and his
22 preoccupation with the subject of privilege suggests
23 that there is indeed a great deal of relevant but
24 undisclosed documentary information.

25 Documents also that will be
26 disclosed as a result of Commission Counsel's efforts
27 in persuading Government departments and agencies to
28 open their doors and files, and also the Arctic Gas
29 response to the Government Assessment Group's request
30 for supplementary information. All of these methods

1 of disclosure are going to result in additional docu-
2 mentary information that will have to be reviewed by
3 the investigators who are responsible for these Nor-
4 thern Assessment Group tasks, to the extent that this
5 takes time, the review tasks are going to take that
6 much more time.

7 Now, the time I have indica-
8 ted for completion of these review tasks is between
9 January 31st and the end of February -- I am not sure
10 whether 1975 is a leap year or not -- I must emphasize,
11 however, that this is completion of the scientific
12 review only and that there are two critical tasks that
13 will not have been completed at the end of February,
14 and these are, first of all, the necessity for receiv-
15 ing input resulting from the experience of Native
16 people in particular areas and the communication of
17 this information back to the Northern Assessment Group
18 investigators.

19 Let me give an example: If
20 there is an assertion in the application, for example,
21 related to some aspect of impact on wildlife in a par-
22 ticular area, the task of the Northern Assessment
23 Group reviewer cannot be completed except in a total
24 academic way until he has communicated the assertion
25 of the applicant to the Native people in that particu-
26 lar area and received their views and considered them
27 in his review of the applicant's assertion. In other
28 words, without that, the review will be totally
29 academic and will in no way relate to the people prob-
30 lem on the route of the proposed pipeline, so there has

1 to be a feedback from the Native people.

2 Secondly, in order to complete
3 this environmental review, there must be input from the
4 social economic work that will be undertaken by the
5 Native groups and counsel for the Native groups will
6 speak to this more specifically.

7 To give an example at this
8 point, environmental impacts on areas of critical
9 social cultural concern are going to be of more
10 tance than environmental impact on other areas, unin-
11 habited areas.

12 Unfortunately, the Northern
13 Assessment Group investigators are not likely to know
14 which areas are critical areas until they receive that
15 information from the socio-economic investigators
16 engaged by the Native group. So, there has to be a
17 feedback in order that the environmental review can be
18 complete in that regard as well, and that is going to
19 take additional time.

20 I must emphasize these two
21 additional factors. Native peoples experienced feed-
22 back and feedback from the socio-economic review
23 conducted under the auspices of the Native organiza-
24 tions is necessary for the completion of the environ-
25 mental review and until those inputs are received, the
26 Northern Assessment Groups work is simply an academic,
27 scholarly sort of review that really does not direct
28 itself fully to the concern of the people on the
29 pipeline route.

30 Now, once the Assessment

1 Group's task is completed in the way I have indicated,
2 the participant group involved in the Northern Assess-
3 ment Group will not immediately be prepared to present
4 their environmental cases because they will not have
5 prepared their environmental cases, they will simply
6 have received the necessary data from the Northern
7 Assessment Group to do so, and it must be clear that the
8 interests of these various participant parties are going
9 to be different, and they are going to use the data
10 provided by the Northern Assessment Group in different
11 ways. They are going to bring different witnesses.
12 They are going to concentrate on different issues and
13 so you must add on a period for preparation after the
14 environmental review is received by those participant
15 organizations from the Northern Assessment Group.

16 It is difficult to put a
17 time limit on that preparation. But I can note that
18 the two week notice period for provision of the
19 synopsis has got to be added in immediately and then
20 there will be additional time for briefing of witnesses
21 and so on, so probably we are talking about one or two
22 months.

23 Now, the final point that I
24 would like to make relates to the proposed format of
25 the hearing and the division into subject areas, this
26 is in addition to Mr. Anthony's comments on this sub-
27 ject but with particular reference to the proposal made
28 earlier by Mr. Goldie. It would appear that there has
29 been a suggestion, both by Mr. Goldie and by Commission
30 Counsel, that the phase nature of the hearing will allow

1 the first phase, that is the engineering phase, to go
2 ahead before the complete review work of the Northern
3 Assessment Group and the full preparation on the
4 environmental and social issues has been completed by
5 the intervenors.

6 I would like to emphasize,
7 and I can't emphasize too strongly, the hazard of com-
8 mencing the technical hearing prior to the Environ-
9 mental Groups and Native Groups being fully prepared
10 on all aspects, including environmental and social,
11 and these are the reasons:

12 "First of all, even at the technical hearing,
13 even if those technical hearings initially at
14 the engineering stage were limited to engineer-
15 ing considerations and reference to impact,
16 whether physical, social, environmental or what-
17 ever were strictly limited, it would still be
18 necessary to have environmental and social
19 preparations, and I would suggest that it would
20 also be necessary to have the views of the
21 Native people on those subjects. This is neces-
22 sary in order that intervenors, both Native
23 groups and Environmental groups can be fully
24 prepared for cross-examination at this stage,
25 and what I am getting at is that, without com-
26 pletion of the environmental and social parts of
27 the review and the native feedback on both of
28 those subjects, there is really going to be no
29 adequate basis for cross-examination at the early
30 stages.

1 Cross-examination with a view
2 to establishing a foundation for environmental and
3 social evidence at later stages.

4 Now, the second point is,
5 however, that Mr. Goldie has made it clear, even at
6 that technical stage, Arctic Gas proposes to introduce
7 evidence related to the physical impact of the pipeline
8 as well.

9 MR. GOLDIE: No, I am sorry,
10 I said we would introduce geo-technical considerations
11 that influence the design, not the impact of the line
12 on the environment.

13 MR. LUCAS: Geo-technical
14 considerations such as slope stability --

15 MR. GOLDIE: What effect
16 does perma-frost have in the design, not the effect of
17 a pipeline on perma-frost.

18 MR. LUCAS: Well, let us
19 take perma-frost then -- that is an aspect of the
20 Environmental Review task that is going to be conducted
21 by the Northern Assessment Group. That is an environ-
22 mental review. If that is not completed at the time
23 the engineering phase of the hearing begins, it is
24 going to be extremely difficult for the Canadian
25 Arctic Resources Committee to cross-examine Arctic
26 Gas witnesses on that subject.

27 My third point is that one
28 answer that has been made to the suggestion I have just
29 made is that you can simply recall the Arctic Gas wit-
30 nesses who testified at the engineering stage later on.

1 We would submit that it is
2 simply not good enough, that it would simply be unfair
3 to the intervenors in the Inquiry.

4 Arctic Gas would then be in a
5 position to put in a strong case initially on the
6 engineering aspects, and the intervenors, having at
7 that stage not completed their environmental review,
8 would not be in a strong position to cross-examine.
9 They might be at a later stage in a strong position to
10 cross-examine but the force of their cross-examination
11 coming three months later, on the issues raised at the
12 early stage, is going to be largely lost, I would sug-
13 gest. But, more basic than that, it is simply unfair
14 to suggest that Arctic Gas should be able to proceed
15 before the intervenors are fully prepared. That would
16 mean that the applicant would be fully prepared when
17 the Inquiry began and that the intervenors would not
18 be. They would be at some later stage, but I would
19 suggest that they would be seriously prejudiced in the
20 intervening months until their preparation is complete.

21 The final point I would like
22 to make arises out of the not unexpected presence of
23 Mr. Gibbs on behalf of --

24 THE COMMISSIONER: Most drama-
25 tic and his grand exit.

26 MR. LUCAS: I will refer to
27 him as Alberta Gas Trunk Line simply for the sake of
28 consistency for the Press people, but at any rate,
29 Mr. Gibbs has indicated that AGTL will be submitting
30 more information on its pipeline proposal to the

1 National Energy Board, Gas Requirement Enquiry.

2 Now, my understanding is that that Inquiry has not been
3 scheduled yet, but it is likely to be held in the late
4 Fall. However, Mr. Gibbs indicated, even at that
5 time, it would be fair to only present, I think he did
6 say a Readers Digest version of the application, and
7 that they would continue working to prepare an applica-
8 tion for submission to the Department of Indian and
9 Northern Affairs and the National Energy Board in June
10 of 1975.

11 We would suggest that the
12 AGTL information is rather pertinent information and
13 in fact it is information that is most pertinent to
14 the first phase of the hearing that has been suggested
15 by Commission Counsel, namely, to the engineering
16 phase.

17 THE COMMISSIONER: Mr. Lucas,
18 it occurred to me, maybe we shouldn't have allowed Mr.
19 Gibbs to escape so easily so he could remain for this
20 discussion, but it occurred to me that in view of the
21 fact Alberta Gas apparently proposes a 42-inch line
22 on which there are, as I understand, some differences
23 between the design of the line they propose and the
24 design of the line that Arctic Gas proposes, that
25 Alberta Gas might very well take a very leading part
26 in the first phase. Mr. Gibbs said whenever you are
27 ready, he is ready, I think that's what he said.

28 MR. LUCAS: With respect,
29 sir, what I was getting at was the fact that Alberta
30 Gas Trunk would be producing technical data, engineer-

1 ing data that is highly relevant, I would suggest, to
2 the purposes of this Inquiry.

3 THE COMMISSIONER: Excuse me,
4 you mean if Alberta Gas were to be subject to the dis-
5 covery procedure and be a participant, I think it is
6 obvious by any definition Alberta Gas intends to be a
7 major participant, it would produce another wealth of
8 information that would require time to be digested.

9 MR. LUCAS: That is pre-
10 cisely what I am suggesting, and whether Mr. Gibbs
11 wants to pursue his role in the Inquiry diligently or
12 not is beside the point.

13 THE COMMISSIONER: He
14 couldn't tell us much.

15 MR. LUCAS: Those are my
16 submissions that I have to make with respect to timing
17 and my submission leads naturally into points that are
18 going to be made by counsel for the major Native
19 groups.

20 MR. SCOTT: Did Mr. Lucas
21 suggest a date?

22 MR. LUCAS: I suggested
23 time. You see it all depends when all that informa-
24 tion becomes available. I suggested a time period.

25 THE COMMISSIONER: I think
26 we will take a 10-minute break, the Court Reporter is
27 about to get writer's cramp.

28 (PROCEEDINGS ADJOURNED AT 4:05 P.M.)

29 (PROCEEDINGS RESUMED AT 4:20 P.M.)

30 THE COMMISSIONER: Mr.

1 Sutton, do you wish to go next?

2 MR. SUTTON: I have a number
3 of comments to make on the procedural questions that
4 were raised. I also intend to comment on the timing
5 of the hearing, the format of the formal hearing, and
6 I also intend to add some comments on the role and
7 format for the community hearings.

8 I would agree with Mr.
9 Anthony that the purpose of this Inquiry is to have a
10 fair hearing of the matters relevant to the Inquiry.
11 I would agree that it is again a unique process and I
12 have some questions as to whether or not the Commission
13 can subpoena documents or witnesses. Surely this must
14 be possible if the Commissioner is to give a fair
15 hearing. Further on the question of production of
16 documents, as I understand Mr. Goldie, he objects to
17 produce this list, that it would create an onerous
18 task on the part of counsel for Gas Arctic because it
19 would require him to go through all the documents to
20 determine whether or not a privilege could be attached
21 against any document.

22 My suggestion as a compro-
23 mise would be it should not be necessary that privi-
24 lege be claimed in any listing of documents, that all
25 that would be required would be that the documents
26 should be listed. Privilege need only be raised at
27 such time as any participant requested production of
28 the documents.

29 I now wish to make comments
30 on the role and the format of the community hearings.

1 I am representing the Indian Brotherhood and the Metis
2 Association of the Northwest Territories and consistent-
3 ly we have put forward the position that the community
4 hearings are a most important aspect of this inquiry.
5 We are therefore somewhat unhappy to see the community
6 hearings have been isolated from the consideration of
7 this particular hearing today, and we have some comment
8 to make with regard to the community hearings.

9 We note that on page 5 of your
10 preliminary ruling, that community hearings were to be
11 heard concurrently with the formal hearing, and after
12 some considerable thought on this, we would like to
13 endorse that position for the reasons that the community
14 would tend to be offended and perhaps disillusioned if
15 the formal hearings were allowed to proceed well in
16 advance of their participation, when it is in fact the
17 Native people in the community at large who are going
18 to experience any adverse effects of the proposed pro-
19 ject.

20 We would also say that the
21 community hearings would appear anti-climatic and sub-
22 stantially reduced in importance if they were to be
23 left well in the latter part of the Inquiry.

24 So we would say the community
25 hearings, while they are important for providing a
26 vehicle for the input of the Native people into this
27 Inquiry, and while they should be concurrent with the
28 formal hearing, we would also suggest the Native people
29 must have an opportunity to have an input into the
30 formal hearing, especially as it would relate to the

1 response of the Native people to the technical evidence
2 which would likely be adduced in the formal hearing
3 which goes again to emphasize that the hearings should
4 be concurrent.

5 We feel that the hearings
6 should happen, as indeed your preliminary reasons sug-
7 gest, when the communities are ready for it and in
8 accordance with a format that is acceptable to the
9 community. Therefore, we respond to the suggestions
10 that a committee of participants be formed to deal with
11 the format of the community hearings with some mis-
12 givings in that while we recognize the value of ongoing
13 communications between the participants, we would hate
14 to see the Committee pre-empt the role of the communi-
15 ties in deciding when they are ready and in what form
16 the hearing should happen.

17 We would also feel that in
18 light of the concern of unique procedures that have to
19 be developed for the communities, that we would suggest
20 that what is required is a device for getting the evi-
21 dence that is presented at the formal hearings into the
22 communities and into the community hearings in a way
23 that would not involve an impact itself from the commun-
24 ity hearings. In other words, we wouldn't want to see
25 an army of witnesses and counsel drive into the communi-
26 ties. The process we feel in each community should
27 vary from community to community subject always to the
28 wishes of each community, and in the communities where
29 the Native people are not a clear majority, then their
30 right to a fair hearing should be protected either by a

1 separate hearing for the Native people in the community,
2 or a specially allocated period of time during the hear-
3 ing, subject again to the wishes of the people in the
4 community.

5 Community hearings should be
6 held in all communities affected, if that community
7 wishes to have one. We note that according to the
8 Gemini North studies, 23 communities were surveyed, and
9 Gas Arctic itself lists in Publication 14C, 26 communi-
10 ties. We also feel that there should be an allowance
11 for a hearing in any Native community in the Mackenzie
12 District if they wish to have it.

13 We have one comment arising
14 from perhaps what Mr. Goldie and Mr. Scott were stating
15 of the special rules to be attached to any participant.
16 We would urge the Commission to take into account
17 cultural considerations and particularly cross-
18 examination should be restrained. If any suggestion
19 that the credibility of a witness, a Native witness is
20 being challenged by vigorous cross-examination, would
21 be regarded as highly insulting and would tend to
22 alienate Native witnesses.

23 Perhaps if I could interrupt
24 my presentation at this time, the question is, is it
25 correct that there is a separate hearing anticipated to
26 deal with the procedure for the community hearings?

27 THE COMMISSIONER: No, I think
28 that anything you want to say about the community hear-
29 ings you should say now, either today, obviously we are
30 going to be here tomorrow as well, that is perfectly

1 understandable.

2 MR. LUCAS: I have a couple
3 of more points to make, to point out that if it is
4 intended that the communities in the Mackenzie Valley,
5 the joint community councils composed of members of the
6 Band Council and the Metis Locals to be established in
7 those communities to deal with, amongst other things,
8 and perhaps most important for the time being, the
9 question of the community hearings in the Inquiry.

10 Another point we wish to make
11 is that consideration should be given to asking the
12 assistance of the Territorial Government in closing
13 down the liquor outlets on days that the hearing pro-
14 gress if this is requested by the communities in ques-
15 tion.

16 Another thing, too, we feel
17 should be kept in mind, since the community informal
18 hearings should be concurrent, it may be possible and
19 is necessary to have a second hearing in a given com-
20 munity if the initial hearing is well on in the initial
21 stages of the inquiry.

22 I wish now to turn to the
23 question of the timing of the hearing. The overview
24 hearing we cannot be ready for by October 15th, and it
25 will involve some difficulty to be ready by November.
26 Amongst other things, we hired a lawyer to work with us
27 full time, and a co-ordinator. These two people have
28 been hired effective October 1st. We also intend to
29 hire an environmental resource person plus two socio-
30 economic resource persons, and a number of field wor-

1 kers. To date we just have the lawyer and the co-
2 ordinàtor, and they are effective October 1st, and it
3 would extremely unfair to expect these people to be
4 ready when they will be settling in and will not have
5 had the time necessary to do even elementary prepara-
6 tion. We would suggest the formal hearings do not
7 proceed until the spring because we do not have our
8 staff.

9 We were just recently sup-
10 plied with the amount of monies that we would get and
11 as yet we do not have the money, but we are recruiting
12 and we are hiring people.

13 It would take time to prepare
14 the communities for the community hearings and an awful
15 lot of work has to be done in that area. We cannot
16 see how the formal hearings can proceed until such
17 time as the communities are ready for their own commun-
18 ity hearings.

19 Our staff has a considerable
20 amount of research to do; amongst other things, we have
21 to establish the co-ordination with the Norther Assess-
22 ment Group. The Northern Assessment Group is, as Mr.
23 Lucas expressed, is going to do, on our behalf, to
24 some extent, much of the environmental assessment that
25 has to be done. The Native peoples themselves will
26 concentrate on the socio-economic impact.

27 The Arctic Gas study has to
28 be assessed and that includes all the studies that are
29 not yet available. The Assessment Group report must be
30 assessed and studied. The information then must be

1 broken down on a community basis, on a regional basis
2 for the purpose of conveying that information to the
3 communities and preparing the communities for the
4 community hearing.

5 Our land use research pro-
6 ject, which is underway but has not progressed sig-
7 nificantly, such as we could comment at this time on
8 the routing of the right-of-way. It is our feeling
9 that our traditional land use study and current land
10 use study must be substantially on its way before we
11 can comment on the question of routing.

12 We must also have an oppor-
13 tunity to do the necessary field work to check the
14 relevance of the statistics of Arctic Gas and Gemini
15 North. We have made an initial look at those studies
16 and we find some statistics require field work on our
17 behalf before we can accept the statistics as realis-
18 tic.

19 We must do an assessment of
20 the impact of other developments in the Mackenzie
21 District and their impact on the Native communities
22 and development elsewhere such as the Alaska Pipeline
23 and the Alaska Highway through the Yukon.

24 I now want to comment on the
25 format of the formal hearing and I would again empha-
26 size that the co-ordination of the community informal
27 hearings is being very important.

28 The four phase approach, as
29 suggested by Mr. Scott, while we see its advantages,
30 we have some misgivings. The obvious one has already

We cannot see that it would be fair to the Native groups to have the engineering and geo-technical phase commence at an early stage. We feel that we would have to be present at these hearings. We would have to have our resource people present at those hearings. We would have to be prepared to cross-examine all witnesses on matters relevant, particularly to socio-impact. In addition, since we are still getting our people together at this stage of the game, it would mean that our people would be tied up for a period of two months at a time when much work has to be done which would in itself force us to claim at a later date we need additional time.

Finally, I would comment that I cannot see how the engineering considerations can be in any way isolated from the environmental and socio-considerations. To do so would suggest the design of the

1 pipeline, the location of the pipeline conclusions were
2 made in isolation from environmental and socio-
3 considerations. Purely that is a self-defeating propo-
4 sition to make on the part of the gas company.

5 Those are my comments.

6 THE COMMISSIONER: Well, can
7 we go to you now, Mr. Cumming. Can we hear from you
8 now or is it getting too late?

9 MR. CUMMING: It could be
10 quite awhile.

11 THE COMMISSIONER: Well, let
12 us start.

13 MR. LUECK: If I may interject,
14 Mr. Commissioner, I have a very short one and possibly
15 if I could go at this time that would end out the day
16 and we could have Mr. Cumming in the morning.

17 THE COMMISSIONER: Well, since
18 you are prepared to go ahead, you go ahead and we will
19 finish and then we can decide about Mr. Cumming.

20 MR. LUECK: Thank you. The
21 General Procedure Rules, Mr. Commissioner, as suggested
22 by Commission Counsel appear reasonable in my opinion
23 except for the timing. The argument put forward by Mr.
24 Goldie for the discovery of documents proposal is not
25 practical and cannot be accepted. I think primarily on
26 the basis that if I understood Mr. Goldie properly, he
27 said he would be prepared to put forward a list of
28 documents at the time notice is given as to the wit-
29 nesses in the different phases, and if he can put for-
30 ward a list of documents at that time, surely he can

1 make them now and bring the entire list at the very
2 beginning. And I cannot understand his reasoning of
3 presenting a list piecemeal.

4 The presenting of the list,
5 I submit, would expedite the hearing because the inter-
6 venors feel that there are certain documents that they
7 would like and if they get their hands on them, it
8 might speed things up. I understand it is the objective
9 of the applicant to expedite matters so it will prob-
10 ably help that way.

11 I would give notice to Mr.
12 Jackson if there is going to be a committee set up to
13 deal with the community hearings format, I would be
14 prepared to participate. At the same time I heard what
15 Mr. Sutton had to say and I believe that his comments
16 are very relevant in that the community hearings should
17 be geared to the wishes of the community itself as to
18 how it should be set up to a great extent and possibly
19 it would be necessary to deal with different communi-
20 ties in different ways.

21 I would hate to see the matter
22 dealt with in such a way that the participants in their
23 own way decided what was going to happen in the commu-
24 nity, and the community was not involved.

25 This is a matter, the next
26 point is a matter which has not come up today but at
27 the last informal meeting, Special Counsel Waddell
28 pointed out that it may be that transcripts of the
29 evidence would not be given to each partic pant, and it
30 is the view of the counsel for the Yukon Indians that

1 it is absolutely necessary that the transcript be given
2 to each of the Native participants, and I would hope
3 that that matter has been resolved.

4 THE COMMISSIONER: I think
5 that transcripts will be available to the major partici-
6 pants so far as those organizations are concerned which
7 have been funded by the Government of Canada, or by the
8 Inquiry, will be available. I think we are in a posi-
9 tion to undertake to supply them so that in considering
10 your own budgetary situation, I think you can take it
11 for granted that you will have a transcript provided.

12 Go ahead.

13 MR.LUECK: The counsel for
14 the Yukon Indians and probably I should explain our
15 position in this matter a little more clearly. They
16 are concerned generally with the entire pipeline con-
17 struction, of course, but particularly with that sec-
18 tion proposed to be placed in the Yukon, and for prac-
19 tical purposes the counsel for Yukon Indians have
20 agreed to join with the Northwest Territories Group
21 to do research on the socio-economic impact on Native
22 communities of the proposed pipeline and also to take
23 the scientific reports of the Northern Assessment
24 Group and relate them to the Native community, Old
25 Crow in particular, and then to prepare the position
26 of the Council of Yukon Indians on these matters and
27 therefore my client is completely bound to the time
28 limits, as you have heard today, of the time when the
29 Northern Assessment Group has completed its report,
30 and when the Northwest Territories Native groups will

1 complete in conjunction with the C.Y.I. and will have a
2 representative involved with that group on the socio
3 and economic impact. But most of this will be carried
4 out in the Northwest Territories, and so we are playing
5 a subordinate role in those matters.

6 In reply to the suggestion
7 that the formal hearings commence now, while the Native
8 organizations and Northern Assessment Group are carrying
9 on their research, in my opinion, is not acceptable.
10 The scientific people doing the study must also hear
11 the evidence of the applicant's witnesses in the rele-
12 vant fields in order to advise counsel of the differ-
13 ence of opinion and fact. They cannot be in both
14 places at once.

15 Even if each were called in
16 for his particular area of research, he could not know-
17 ledgeably listen and analyze the evidence as he has not
18 completed his own studies.

19 For counsel themselves to
20 assess such a hearing without their experts at hand
21 would be a waste of time. I personally could not, in
22 good conscience, advise the Counsel for Yukon Indians
23 to invest funds for me to intervene at an Inquiry
24 without proper background information and I think it
25 is absolutely essential that there be some reconcilia-
26 tion for time differences.

27 I have nothing further to
28 add.

29 THE COMMISSIONER: Thank you.
30 I would like to say something about the community hear-

1 ings. I think we will carry on for another hour or
2 so, unless there is serious objection.

3 I think that Mr. Scott, in
4 framing his proposals, was not disposed to say an awful
5 lot about the community hearings because never appar-
6 ently having been north of the 60th Parallel himself,
7 he shouldn't pretend to know a great deal about the
8 subject.

9 As you know, I have been to,
10 I think, most of the communities. Professor Jackson
11 has spent the whole summer in two or three of the
12 communities and it was felt that so far as those com-
13 munities are concerned with the Native people, it was
14 important they should be prepared in every way for the
15 hearing to take place in their own community. And I
16 think all of the major participants understand that the
17 Native organization will be very deeply involved in the
18 preparation of the community hearings but at the same
19 time to be fair to all concerned, I think that the
20 major participants should all have and all be kept in
21 touch with the thinking that is going into the develop-
22 ment of the community hearings and that is why I asked
23 Mr. Jackson to act as a co-ordinator.

24 That is not intended in any
25 way to impose some cast-iron form of format upon the
26 community hearings. It is simply to make sure that the
27 Inquiry and Commission Counsel, the Canadian Arctic
28 Resources Committee, Arctic Gas, Alberta Gas Trunk,
29 they all have some idea of what is going on in connec-
30 tion with the planning of the community hearings.

1 I should say I fully expect
2 that the Northwest Territorial Association of Municipal-
3 ities will be a participant in the Inquiry and repre-
4 sented by counsel and it seems to me that the municipal-
5 ities should be represented on Mr. Jackson's committee
6 too.

7 I don't think that anyone, I
8 don't think any of the major participants, and certainly
9 not I intended to suggest that the community hearings
10 were not as important in any sense as the formal pro-
11 ceedings. We have a lot of lawyers here and they know
12 a lot about how formal hearings should be conducted,
13 notwithstanding what has been said today, so they are
14 prepared to make a contribution in that regard. They
15 are a little reticent, I think, about making the con-
16 tribution in connection with the subject of community
17 hearings.

18 MR. LUECK: May I make one
19 final comment on the overview hearing. I have no par-
20 ticular concern about time limit except probably one,
21 it would appear the overview hearings are going to last
22 a week, and I would suggest it then proceed at least
23 10 days before or 10 days after Grey Cup Day in Vancou-
24 ver so that some of us, who may be interested in going
25 to the Grey Cup Game, can go there.

26 THE COMMISSIONER: Well, all
27 I can say is that I don't expect everybody else will
28 respond to that suggestion.

29 I think Mr. Reesor for the
30 Northwest Territories Association of Municipalities has

1 a very short contribution to make. Mr. Reesor, I think
2 you should proceed now. Would you like to go ahead.

3 MR. REESOR: Thank you very
4 much. It will be a record in reticence. I would like
5 to submit a very brief statement in the form of a
6 letter, a copy of which was given out.

7 "On April 24th, 1974, the Northwest Territories
8 Association of Municipalities had the privilege
9 of making its views known to the Mackenzie Valley
10 Pipeline Inquiry in Inuvik. A further submission
11 by letter dated May 1st, 1974, was entered in the
12 record of the Inquiry hearing held in Ottawa on
13 May 6th, 1974. These statements reviewed the
14 recommendations of the Association regarding
15 timing, location and format to be followed at the
16 main hearings in the Canadian Arctic Gas Pipeline
17 application. In light of previous submissions,
18 we are pleased to take the opportunity to comment
19 on the proposals of Mr. Ian G. Scott, Q.C.,
20 Commision Counsel.

21 On the subject of location,
22 Number one, we are in complete agreement that the
23 hearings should be held in the Northwest Territories;
24 and the second point on that, we support the view
25 held by the Honourable Mr. Justice T.R. Berger in the
26 Preliminary Rulings of July 12th that hearings should
27 be held in each of the communities likely to be affec-
28 ted by the pipeline.

29 This, as I understand it,
30 will be discussed further and the rulings will come

1 down as to the scheduling and the particular communi-
2 ties that are visited.

3 On timing, as indicated in
4 our previous briefs, we are in favour of an early start
5 in the hearings. I think the reasons for this have
6 been tossed around in the past and as a result we
7 support the specific dates suggested by Mr. Scott in
8 his proposal, and still support the new date.

9 Finally, in general terms,
10 the format, we are in agreement with the mixture of
11 formal procedures at the formal hearings and a more
12 informal format at community hearings. This will ob-
13 viously encourage the greatest participation of the
14 democratically elected people at the local level, the
15 Municipal Councillors because it is they who will
16 ultimately be held responsible for the effects of the
17 construction or the non-construction of the pipeline
18 in their community.

19 Over all then we are generally
20 in favour with Mr. Scott's proposals. Since our major
21 emphasis will be on the effect of the pipeline on the
22 human environment, particularly in that category of
23 socio and economic impact, which in line with his
24 proposals has been shown as a fourth area of concern
25 and probably will not be dealt with until the summer-
26 time or maybe even the fall of next year.

27 We feel, as well as timing,
28 that his format pretty well meets with our objectives
29 in this area.

30 Thank you.

1 THE COMMISSIONER: Thank you,
2 Mr. Reesor. Mr. Reesor has been good enough to put this
3 in writing and I will ask that this letter be marked as
4 an exhibit.

5 (LETTER DATED SEPTEMBER 11th, 1974, FROM THE NORTHWEST
6 TERRITORIES ASSOCIATION OF MUNICIPALITIES MARKED
7 EXHIBIT 37.)

8 MR. CUMMING: Mr. Commis-
9 sioner, is it in order or appropriate to ask Mr. Reesor
10 some questions in light of his submission?

11 THE COMMISSIONER: I think in
12 the course of your remarks you might indicate what it is
13 you wish to know from him and I am sure he will be
14 happy to answer. Would you mind, Mr. Reesor?

15 MR. CUMMING: It would be more
16 appropriate because it is out of the context of my re-
17 marks. My questions are as follows: I assume that the
18 Association of Municipalities includes not simply
19 municipalities in a legal sense but right down to the
20 hamlet and settlement council.

21 MR. REESOR: No, the defini-
22 tion of municipalities under the Municipal Ordinance
23 are hamlets, villages, towns and cities and it does not
24 include settlements so there is some ten municipalities
25 in the valley or the Mackenzie District Area.

26 MR. CUMMING: I see. My
27 second question, Mr. Commissioner, and will be appro-
28 priate is, in light of his response to Mr. Scott's sub-
29 mission, I am wondering as to what communication was
30 made with those municipalities that are being repre-

1 sented specifically on the question of the commencement
2 of the hearing, and I am wondering as to whether the
3 municipalities were in fact asked or whether the topic
4 of a commencement date that is suitable was made by the
5 Association Executive.

6 THE COMMISSIONER: Well, Mr.
7 Cumming, I am not going to ask Mr. Reesor to answer
8 that question. It seems to me we should take it that
9 anyone who comes here either as a member of the bar, or
10 as Mr. Reesor, representing an organization, we should
11 assume that anything he conveys to us on behalf of an
12 organization is given to us in good faith. I don't
13 think it would be right for all of you to start
14 cross-examining each and every person who appears to
15 see whether he really had the right to speak on behalf
16 of the people you represent.

17 I don't intend to pursue
18 that. I should say though that Mr. Reesor appeared
19 at the hearing that I held in Yellowknife and Inuvik
20 back in April. He appeared on behalf of the Associa-
21 tion of municipalities then, and he requested funding
22 on behalf of the Association. All of the groups that
23 had requested funding were asked to put budgetary
24 proposals together and the Association of Municipali-
25 ties was in the process of doing so and I should say,
26 in the course of my travels this summer, I met
27 officers of the Association, the Mayor of Yellowknife,
28 and Mr. Robertson, the Mayor of Inuvik, and they ex-
29 pressed the view, very much interested in the Inquiry
30 and I urged them to put their proposals together, and

1 I should say to you, to all of you, as I have said to
2 them, I met them with Mr. Waddell in my company last
3 night, that the Inquiry will give sympathetic consider-
4 ation to providing funds to the Association to enable
5 it to grapple during the course of the Inquiry with
6 those aspects of the pipeline development that relate
7 to the problems of the Municipalities of the Northwest
8 Territories.

9 May I just repeat that the
10 budgetary proposals that were submitted by the other
11 organizations for funding, were in fact placed before
12 the Inquiry back in May and have since been approved
13 either by this Inquiry or by the Treasury Board of the
14 Government of Canada. That procedure was one which
15 will still have to be followed in the case of the
16 budgetary proposals of the Association of Municipali-
17 ties, but I do look forward to the Association being
18 represented in Phase IV of the Hearing.

19 Now, when I say that, I am
20 not trying to draw a sharp fine line between each phase
21 but obviously the phase of particular interest in the
22 movement of caribou across the pipeline right-of-way,
23 other environmental groups have been funded to ensure
24 an adversary proceedings on those environmental issues.

25 Well, Mr. Cumming, we will
26 ask you to proceed and I apologize for not recognizing
27 you earlier this morning.

28 MR. CUMMING: I appear on be-
29 half of the Committee for Original Peoples Entitlement
30 and the Inuit Taparissat of Canada, Mr. Commissioner,

1 and with me is Mr. Bailey. I might say that Mr.
2 Bailey has just recently been appointed as counsel
3 with respect to the hearing and he will be the person
4 conducting for the most part from here on in.

5 I might say also for the
6 benefit of the audience that might not know, COPE and
7 ITC are complimentary Eskimo Inuit organizations
8 representing the Inuit interests in the Northwest
9 Territories and the Western Arctic specifically.

10 In respect to Mr. Scott's
11 proposed Rules of Procedure, Mr. Commissioner, I might
12 say that generally we approve of them. I have minor
13 points to make, one very major point, and that is the
14 commencement date of the proceeding, and I will spend
15 some time on that but generally speaking we will com-
16 pliment him upon that.

17 In respect of a minor point
18 of criticism, a relatively minor point of criticism
19 of his submitted proposed Rules of Procedure. Let me
20 go through them in order if I could -- on the first
21 point on page 1, as to the place of the hearing. We
22 would submit very forcefully at least some of the
23 hearings be conducted in Inuvik. I think it is the
24 intention to have them in other centres and obviously
25 that is the next centre of importance.

26 Secondly, in respect of the
27 definition of participants, I take it that --

28 THE COMMISSIONER: Could I
29 interrupt you, Mr. Cumming. I would like to see the
30 formal hearings held not only in Yellowknife but

1 particularly in Inuvik as well, and if it were to be
2 possible, I would like certain of the evidence relating
3 to the impact of the pipeline in the Mackenzie Delta to
4 be heard in Inuvik. That may be the only place we
5 could convene this rather large group of lawyers and
6 experts, but I am certainly with you there and would
7 think there is not likely any dispute about it.

8 Excuse me for interrupting,
9 carry on.

10 MR. CUMMING: The second
11 point that he makes on the definition of participants,
12 I think if it is to be a definition, that it is inten-
13 ded obviously to include official entities, and that
14 the requirements set forth in sub-paragraph (a) and
15 (b) are intended to be accumulative so far as I read
16 the intention of his definition. I say artificial
17 emphasis on organizations and corporations because they
18 are the ones in the most part who will be required to
19 produce documents which is set forth in Section 4.

20 Now, on the question of pro-
21 duction of documents, some minor points first. The
22 rule procedure here refers to participants but the
23 Government of Canada is not a participant, but I be-
24 lieve I am correct in understanding from his explana-
25 tion that he would be requiring of the Government of
26 Canada exactly what he requires of the other partici-
27 pants as set forth in the formal ruling, but the pro-
28 cedure may be different. In other words, any document
29 that the Government of Canada has, which has been
30 prepared in connection with the possibility of a pipe-

1 line is relevant in that consideration. A list would
2 be made and we would have access to it subject to
3 objections claimed as privilege by the Government and
4 so forth.

5 MR. SCOTT: Mr. Commissioner,
6 it might be helpful just to respond to that. The
7 Government of Canada is, of course, a third party of
8 the type that has been referred to earlier this morn-
9 ing. They cannot be bound by and have not submitted
10 to any proposed rules.

11 As I said this morning, what
12 we propose to do, what Commission Counsel proposes to
13 do, is to prepare a list of documents initially which
14 are in the possession or power of the Government of
15 Canada. We will prepare that list and we will cir-
16 culate it to the parties or participants, to use that
17 definition, and then, assuming a participant requires
18 inspection of one of those documents, he will make his
19 request of the third party, the Government of Canada,
20 either directly or perhaps more likely through Commis-
21 sion Counsel. The requests, will no doubt, in the
22 vast majority of cases, be granted. If the request is
23 not granted, then the procedures that are utilized
24 relate entirely, I think, to the scope of the sub-
25 poena power.

26 I have no doubt that will be
27 a reasonably satisfactory procedure. We will just
28 have to, if it is accepted by the Commission, we will
29 have to carry forward and test it on a case by case
30 basis. I have no doubt generally speaking it will

1 assure full production.

2 MR. CUMMING: As to the
3 second group from whom documents may be required, non-
4 participants, non-government, I would emphasize we feel
5 strongly the availability of production from those
6 parties such as Mackenzie Valley Pipelines Ltd., the
7 gathering lines parties and so on, that that is essen-
8 tial to developing a comprehensive evaluation of the
9 application and that takes us to the next point as to
10 what documents should be produced generally and what
11 is the legal power of the Commission, and what is the
12 nature of this Inquiry.

13 Now, on that question, and
14 taking the easier of the two first, the nature of the
15 Inquiry, let me emphasize that we are in accord with
16 what I understand Mr. Scott's idea of the nature of the
17 Inquiry, which underline his rules of production of
18 documents, and that is this, that we are not talking
19 about fraud in a civil action, we are not talking about
20 something that is adversarial in that sense, we are
21 talking about something that has been set up, a Commis-
22 sion that is the servant of the public interest and
23 therefore, because the public interest is paramount,
24 there should be full and frank disclosure and that
25 should apply to all parties, our client as well as the
26 applicant, and everyone else concerned.

27 Therefore, given that para-
28 mount public interest, we feel strongly that his sugges-
29 ted procedure should be adopted. The rules and pro-
30 cedures, I understand in a nutshell, are that the appli-

1 cant and every other participant would be required to
2 prepare a list of documents, reports and things of that
3 kind which have been prepared in connection with the
4 preparation of the application in the applicant's case,
5 and by other parties in connection assessing the appli-
6 cation and dealing with these hearings. I stress in
7 connection with the application in respect to Gas
8 Arctic as opposed to those documents and reports it
9 intends to rely upon. Obviously those are to be pro-
10 duced at some point because it has relied upon them.
11 As you have set forth, Mr. Commissioner, it has to pro-
12 duce the evidence that it is relying upon but what is
13 essential is, and this goes to the paramount public
14 interest, that any document prepared be listed and be
15 subject to access so that if there is something pre-
16 judicial to the application which is not otherwise
17 known, it can be determined that it exists and it should
18 be produced.

19 Now, from a practical stand-
20 point I find it very difficult to imagine that the
21 applicant at this point does not have a list of all the
22 documents, reports, etc. prepared in connection with
23 the application, and it would be a minor chore to pro-
24 duce that list within a short period of time.

25 No one is asking for a list of
26 things like that, just the documents and reports of that
27 kind that have been prepared in connection with the
28 application. No one is asking the applicant to pro-
29 duce matters referred to in the bibliography which is
30 a part of the reports he has produced, just the things it

1 has, or its subcontractors have developed on its behalf.

2 I think, given the nature of
3 the Inquiry, which without question, forgetting for the
4 moment the legal framework, is a public Inquiry and
5 analagous to Section 4 of the Public Inquiries Act and
6 I stress that because of a couple of cases I will men-
7 tion that the production has to go to that extent.

8 Now, in respect of public
9 Inquiry, while the law might be nebulous as to the
10 fine line between formal rules of evidence and other-
11 wise, it does seem clear, this is from very limited
12 looking at the matter, it does seem clear, I think, that
13 the Rules of Evidence are relaxed and that is is a much
14 broader situation to meet that paramount public purpose
15 and I will refer you to two cases which might be of
16 some help in respect of the nature of the Inquiry.

17 While it is self-evident,
18 I want to emphasize this before we go to the legal
19 power of the Inquiry. The two cases I will refer to
20 are both Ontario cases and they are in respect of the
21 Public Inquiries Act and the Ontario Public Inquiries
22 Act has a section that is analagous to Section 4 of
23 the Federal Public Inquiries Act which was referred to
24 by Mr. Goldie earlier.

25 Now, the cases are, the most
26 recent one is Re Public Inquiries Act and Shulman,
27 1967 O.R. 375. The earlier one is the case of Re
28 Holston 1922, 52 O.L.R. 444.

29 Now, these cases dealt with
30 questions of a Commissioner under the Public Inquiries

1 Act as to how broad his powers were. The earlier case,
2 a Court of Appeal decision, dealt with the production
3 of telegrams and documents which in fact had a status
4 of privilege because of another Statute and yet it was
5 held that they had to be produced because of that public
6 interest. In other words, it is a very exceptional
7 situation and the onus is upon someone to establish that
8 exceptional situation if the document is not to be pro-
9 duced, if the Commission has directed that it should be
10 produced. In fact, the suggestion in the cases is that
11 relevance is not the test, the test is whether the
12 Commissioner wants the document, and if he wants the
13 document, it has to be produced.

14 Now, as to the second ques-
15 tion, as to the legal power of the Commission, obviously
16 I can't add much to what has been said, but I want to
17 stress that whatever the legal powers, I think the
18 nature of the Inquiry is clear and that Mr. Goldie's
19 point only goes to the question of enforcement.

20 If it is clear that paragraph
21 19(h) of the Territorial Lands Act is analagous in
22 policy and purpose to Section 4 of the Public Inquiries
23 Act, I think it is clear as to the range of the Commis-
24 sion's scope of Inquiry from a proprietary sense. The
25 only possible point of contention could be as to whether
26 the Commission can enforce its desire in a give situa-
27 tion.

28 Now, I can't deal with that
29 question although it was mentioned we were going to
30 think about it overnight. Paragraph 19(h) of the Terri-

1 torial Land Act, the language is not identical with
2 Section 4 of the Public Inquiries Act so that perhaps
3 it can be argued that you do not need another provision
4 in the Territorial Land Act which is like the next
5 section of the Public Inquiries Act, Section 5, which
6 brings the public inquiry to having the powers of a full
7 Civil Court of Record as to enforcement, and that is
8 the only point in issue.

9 The only additional thing I
10 would say, and this is just off the top of my head, it
11 seems to me that where an administrative Tribunal is
12 not a civil court of record with those powers, that the
13 language in the Statute, in constituting the powers of
14 that administrative Tribunal, is different and weaker
15 than the language of 19(h) of the Territorial Land Act.

16 In other words, because we have
17 some administrative Tribunals which obviously do not
18 have the powers of a court of record, I think, my guess
19 would be the language constituting, that statutory
20 language is weaker language and more restrictive of
21 powers than the language of 19(h), which certainly im-
22 plies when it says "Summon witnesses and documents",
23 certainly implies the power to carry it out.

24 Now, the last point on that
25 is, and because the nature of the Inquiry doesn't
26 change and it is only a question of enforcement, I am
27 not sure whether we are dealing with a real problem,
28 because certainly we are not challenging the Commis-
29 sioner's powers in the broadest sense of interpretation
30 up to this point in time. I think it should be deter-

1 mined whether or not someone else wants to challenge
2 that because if that is the case, then I think we are
3 down to a crucial point and I have to emphasize that we
4 believe that there are non-participants for whom a
5 subpoena ducus tecum will have to be issued, for
6 instance, Mackenzie Valley Pipeline Ltd., because the
7 preliminary ruling says "The documentation in respect
8 of any proposed oil pipeline" is, of course, relevant
9 to the Inquiry.

10 Similarly in respect of
11 gathering lines, and indeed in respect of things in the
12 field so that, while we won't know what position those
13 non-participants will take at some later point in time,
14 I think we can know fairly shortly whether Gas Arctic
15 intends to adopt a formal position on this point of
16 power or not.

17 If it is proposed to challenge
18 the Commission's powers, then obviously a reference and/
19 or an amendment is needed if it is not successful --
20 pardon me -- if the Commission doesn't have these
21 powers because we emphasize if it is accepted, we feel
22 the heart is cut out of the power of giving effect to
23 the nature of the Inquiry which is to meet the public
24 interest in a full and frank, broad disclosure is
25 necessary to meet that public interest.

26 Now, that is all I will say
27 then in respect of the documents. In respect of the
28 other points of minor importance in Mr. Scott's proposed
29 procedures, let me deal now with Point 5, the discovery
30 of witnesses. The only thing I will add here on this

1 two-week requirement, again I think it is a guideline,
2 we will rely upon the Commission to exercise its dis-
3 cretion in respect of the Native organizations in par-
4 ticular.

5 It may well not be logisti-
6 cally possible, given time, resources and people, to
7 always comply with this provision, especially with
8 respect to that type of timetable.

9 In respect to No. 6, the order
10 and content of the hearing, we are dealing with a mammoth
11 thing. We are breaking new ground; we commend Mr. Scott
12 for his proposed section approach. I think it is some-
13 thing to attempt to start out with that and see where we
14 go with the understanding that flexibility, the topics
15 are to a great extent interdependent, of course, and we
16 cannot in any way be rigid. And with the caveat, when
17 we say we approve of the section approach, we are doing
18 so on the basis that while it economizes effort and
19 allows for a logical progression, dealing with things,
20 at least at first appearance, it does not in any way
21 advance what we consider to be necessarily the earliest
22 possible starting date.

23 In respect of the overview we
24 approve of his proposal. We do not think there should
25 be cross-examination of witnesses, at that point, at
26 least, and we think the overview might be useful. We
27 are not that concerned as to when the overview takes
28 place, although because we are recommending to you, Mr.
29 Commissioner, that the rest of the formal hearing be set
30 back much later. We think logically the overview should

1 take place just before the remainder of the formal hear-
2 ings, but if it was thought that in all events if the
3 overview had to take place on November 18th, then we
4 would not be that concerned.

5 Our point is that the commence-
6 ment date for Section 1 or howsoever the rest of the
7 formal hearings are constructed. I suppose, of course,
8 Mr. Scott will supply his own suggested rules of pro-
9 cedure and provide two weeks notice as to everybody and
10 a summary of their evidence, and that gets us down to
11 November 4th as his first deadline if that date is
12 adopted.

13 MR. SCOTT: Just watch.

14 MR. CUMMING: On the community
15 hearings we are in accord with what you said, Mr. Com-
16 missioner, and I think the position being taken with
17 the Commission would have to be with Mr. Jackson with
18 heavy emphasis here on great flexibility, of course, and
19 a lack of formality and allow the communities them-
20 selves to largely determine the format of the hearing.

21 Before dealing with Point 7,
22 the commencement date, two last minor points in respect
23 of No. 8, the order of examination. We agree with the
24 suggestion and generally we think that the first inter-
25 venor, that is after Gas Arctic puts in its evidence,
26 the first intervenor to be called upon would be the
27 Environmentalists from a logical standpoint, meaning
28 the Northern Assessment Group, the Environmental Pro-
29 tection Board, and any other participant which falls
30 within that category, and then thereupon the Native

1 organizations and/or various and sundry participants
2 from time to time.

3 The last minor point in re-
4 spect of the Rules of Evidence, I just want to say we
5 agree, we are in accord with Mr. Scott's response to
6 Mr. Goldie, and what I think would be suggested, the
7 position on that, there cannot be any priority approach
8 but in accord with the nature of the Inquiry, again I
9 will emphasize there can be relaxation in respect of
10 the hearsay rule and other evidentiary questions. I do
11 not have authority to cite, sir, there is a fairly good
12 -- at least a very good article on Administrative Evi-
13 dence by Keith Turner, 1966, 4 Alberta Law Review 1973
14 which deals with Administrative Evidence. I think gen-
15 erally at different points emphasizes relaxed rules in
16 respect of public inquiries giving evidence.

17 Now, on the major point of con-
18 tention --

19 THE COMMISSIONER: Excuse me,
20 do you have a copy of that article?

21 MR. CUMMING: Yes, I can give
22 you my copy.

23 THE COMMISSIONER: It may be
24 in the Law Library.

25 MR. CUMMING: On the major
26 point then, Mr. Commissioner, the commencement date,
27 Point 7 of the suggested procedures, I would like to
28 spend some time on that if I can, because we consider
29 that to be, first of all a great problem, a dilemma
30 problem for all of us.

1 THE COMMISSIONER: Could I ask
2 you another question? It is kind of late in the day,
3 I am sorry I am interrupting you so often, but you are
4 saying, your proposal is that any study that people
5 employed by MAG or Native Organizations, any study that
6 any of their people were to prepare about the impact of
7 the proposed pipeline and the impact of an oil-line,
8 which, as you pointed out in the Pipeline Guidelines,
9 have to be taken into account, that as far as you are
10 concerned that would go on your list of documents and no
11 claim of privilege would be advanced, even if that re-
12 port carried out perhaps by some scientific employee of
13 MAG or Native Organizations, even if that report were to
14 say simply "We agree with Arctic Gas", you are saying
15 no claim of privilege would be advanced.

16 MR. CUMMING: Yes, I am say-
17 ing that. Let me qualify it in this respect, I think
18 the same rules should apply to everybody. When we are
19 talking about the nature of that Inquiry, if the public
20 interest is to be met, it is not be met by one party and
21 not another. I am talking about the listing of docu-
22 ments, reports, etcetra, and just as an aside there,
23 because I didn't mention this earlier, if it bothers
24 Mr. Goldie and his conscience to swear an affidavit,
25 I don't think that is important. I think it is the
26 listing in good faith that has to be met, of course,
27 and that is assumed. It does not have to be a formal
28 affidavit in the usual sense but it has to be that
29 comprehensive listing.

30 Now, I would allow the claim

1 of privilege. I think it is a much weaker claim. The
2 authorities I mentioned may touch upon privilege and
3 obviously much else has to be looked at.

4 Offhand, I wouldn't agree with
5 Mr. Goldie's assessment of what privilege is. Obviously
6 you can envisage situations where privilege should be
7 claimed and the Commission should recognize it. I am
8 saying I think that is the exceptional situation. The
9 onus should be on the party who claims the privilege in
10 a given situation.

11 I don't foresee the partici-
12 pants you have mentioned claiming privilege, that is why
13 I responded to your question, but there might be an
14 appropriate situation.

15 THE COMMISSIONER: Oh yes,
16 but Mr. Goldie made the point that practically every-
17 thing that Arctic Gas has prepared, all of its studies
18 and reports were prepared in anticipation of making an
19 application to the Minister of Indian Affairs and Nor-
20 thern Development for a right-of-way, and to the
21 National Energy Board for a Certificate of Public Con-
22 venience and Necessity, so applying the normal legal
23 rules, as we do in lawsuits, those documents would all
24 be privileged, having been prepared in anticipation of
25 litigation.

26 Now, you are saying no such
27 claim of privilege should be entertained in this
28 Inquiry, and speaking for the people you represent,
29 COPE and the Inuit Tapirisat, you would yourself not
30 make any claim of privilege.

1 MR. CUMMING: We would not
2 exercise privilege on that basis, and I cannot see us
3 exercising privilege on any basis, but there might be
4 something that I don't know.

5 THE COMMISSIONER: We are
6 talking about the basis of privilege that Mr. Goldie
7 discussed. There may be other bases of privilege that
8 may arise but there is no point in speculating.

9 MR. CUMMING: The basis that
10 I think underlies this concern is prejudice, and a party
11 should not be required to prejudice itself. I do not
12 see that as being a proper basis for this hearing. I
13 do not see that as being a proper basis for my client.
14 We would not be relying upon that basis so that if
15 there was a report that we prepared, a socio-economic
16 report which said the pipeline was the greatest boon
17 to the Native people of the North since the beginning
18 of time, we would feel compelled, with unhappiness per-
19 haps at the quality of the report, but we would feel
20 compelled to produce it.

21 THE COMMISSIONER: Before
22 you go on to the starting date, could I just ask you,
23 Mr. Templeton, Mr. Goldie described the Environmental
24 Protection Board as an intervenor, and I think cer-
25 tainly everyone is most anxious to have the Board par-
26 ticipate to the fullest extent in this Inquiry.

27 Has the Board anticipated
28 intervening in the sense of obtaining counsel to bring
29 forward the evidence contained in the report, or had
30 the Board thought that they would wait until one of the

1 multitude of parties we have put together would call
2 upon you.

3 MR. TEMPLETON: Mr. Chairman,
4 Mr. Commissioner, I hate to answer that in the present
5 company because in truth we thought we would try to
6 get along without counsel, but we are keeping our
7 options open and at the moment we do not have counsel.

8 THE COMMISSIONER: Thank you.
9 It may be that you may well decide the best way to
10 proceed is to proceed without counsel.

11 Just before -- you mentioned
12 the business of starting dates. So far, in July it was
13 mentioned in the Inquiry, 67 pages of questions were
14 sent to Arctic Gas about the material contained in
15 their application. It is no fault of Arctic Gas that
16 those questions prepared in June did not go out until
17 July. Their answers, I gather from what has been
18 said, will not be available to the Assessment Group,
19 I am speaking now of Doctor Fyles Assessment Group
20 consisting of public servants, their answers will not
21 be available to Doctor Fyles group until the end of
22 September. As I say, no one can blame Arctic Gas for
23 it. Doctor Fyles cannot have his Assessment Report
24 ready until the end of October, I gather from what
25 has been said.

26 Now, the suggestion has also
27 been made that the formal hearings should not begin
28 until the list of documents, assuming Mr. Scott's
29 proposals were to be accepted, had been prepared and
30 disclosed, and all the reports provided that anybody

1 else's list.

2 Now, the people with the
3 main responsibility for compiling these lists are Mr.
4 Scott and Mr. Goldie. Mr. Scott will fill out a
5 list based on the reports and studies done by the
6 Government of Canada; Mr. Goldie, the studies and
7 reports in the hands of Arctic Gas. So that we are
8 really putting an onus on them. Mr. Scott voluntar-
9 ily put the onus upon himself and the suggestion to
10 me by Mr. -- I can't remember, Mr. Anthony or Mr.
11 Sutton, that all that material should be available
12 before the starting date is even set, I take it.

13 I only repeat all that so
14 you will know I got that far and it isn't really
15 necessary to go over it again.

16 MR. CUMMING: I might say
17 this, Mr. Commissioner, we will take it one step fur-
18 ther and say on the basis on compliance with the sug-
19 gested time, new time, we could suggest a starting
20 date which I hope the Commission will approve of.

21 Let me say -- should I go
22 on?

23 THE COMMISSIONER: Yes,
24 certainly. I may say I only reviewed what I under-
25 stood had been said so far for my own benefit to make
26 sure that the hours since eleven o'clock have not been
27 wasted, as far as I am concerned.

28 Go ahead.

29 MR. CUMMING: Well, I think
30 the point, thinking of that, is that there is a cer-

1 tain minimum period of time, indeed it is a compromise
2 period of time after that documentation is all on the
3 table, before the formal hearing should take place.

4 I would like to go through it
5 in a fairly detailed fashion as how we intend to struc-
6 ture our research work in order to enable us to evaluate
7 the documentation and the later evidence and to be able
8 to participate meaningfully at the hearing.

9 Let me also say more gener-
10 ally, and going back to our point about privilege, and
11 the nature of this Inquiry, that we are not in any way,
12 talking about time for commencement of the hearing,
13 trying to delay it or introducing tactics of any sort,
14 and I want to assure Mr. Goldie in light of his re-
15 marks, we have no preconceived judgment whatsoever
16 about the pipeline, indeed we might well bless it for
17 its merits after this hearing. We see ourselves as
18 an intervenor simply trying to determine what the pub-
19 lic interest is, as with all other intervenors and the
20 applicant and the Commission, and I stress that.

21 Now, going to the goal of the
22 Commission in your preliminary ruling, the whole nature
23 of this, that paramount public interest, is that there
24 be meaningful Native people participation. We are not
25 going to go into history and talk about mistakes of the
26 past. Obviously, historically there is not involvement.
27 This is the first time and the first time in connection
28 with anything of significance and there has probably
29 never been something more significant than this pro-
30 posed mammoth project, so it is essential that there be

1 true opportunity, fairness and a respect for the people
2 potentially most drastically affected that they really
3 can't have effective participation.

4 Without going over the ground
5 today, I would also like to stress that at this point
6 in time, the people who have been in the business of
7 pipelines, so to speak, the applicant has taken three
8 years to prepare. The Government, since the applica-
9 tion was filed in March, and setting up their Assess-
10 ment Group, will take some seven months to make an
11 evaluation. The Commission, which was set up, I be-
12 lieve, about March, that you could really say is coming
13 to a consummation, being set up about this point in
14 time, which is six months, so it is completely under-
15 standable that the Native organizations, who neces-
16 sarily in that process, get set up at the latest point
17 in time, need a reasonable period to get onstream.

18 Now, in the briefs that were
19 filed at the earlier hearing, sir, in May, submissions
20 were made which uniformly, and that was in May,
21 uniformly spoke of a date for the commencement of the
22 formal hearing in June 1975. I may be wrong because
23 I haven't read the full record or indeed a great part
24 of it, but I don't believe anybody has responded to
25 the merits of the argument as to those starting dates,
26 proposed in all of those submissions. I don't think
27 anyone has responded to that. Other dates have been
28 suggested but nobody has met the argument of those
29 submissions or indeed tried to deal with them.

30 Those submissions in May were

1 premised on funding in June 1974. While funding has
2 been committed, it has not yet been received and
3 people are just being hired or will be hired in the
4 next short while by the Native organizations. All
5 that gives us a dilemma which I hope you will sympa-
6 thize with us and I sympathize with you. A dilemma
7 because everybody else is underway, necessarily be-
8 cause of that process, and I am not faulting it in
9 way, but necessarily because of that process, we are
10 just getting underway.

11 The dilemma is this, we need
12 time to prepare and participate effectively, and that
13 means a pause, and that is difficult when other groups
14 are ready, when large staffs are there and funds com-
15 mitted and people are ready to proceed. So it is a
16 dilemma, but if, as everyone has said, the people
17 ultimately and truly, the most important element, and
18 if you accept our point, that we can only participate
19 effectively with a reasonable time after disclosure
20 of all the documents, before commencement of the for-
21 mal hearings, then I think that ruling as to the
22 commencement date has to accord with that necessarily
23 reasonable period of time we would respectfully sub-
24 mit.

25 All right, now let us talk
26 about from a detailed standpoint our time schedule and
27 why we submit the time is necessary. And notwith-
28 standing that funding is just coming, the date and
29 schedules we would like to talk about is June 15th,
30 1975. I stress the point that we consider that we are

1 compromising, but we consider the other interests in
2 connection with this Inquiry, but we think that the
3 minimum reasonable time to meet our interests and
4 assuming, when I say that, that the documentation will
5 be disclosed in accordance with the date that you refer-
6 red to.

7 Now, the way that we are
8 conducting our work is as follows:

9 You have heard the submission of the Northern
10 Assessment Group and that its environmental re-
11 view will be about February 1st, 1975. The Nor-
12 thern Assessment Group is in large part -- well,
13 you might say entirely a resource group in respect
14 of the environmental data, evaluation, appraisal
15 of the application, and the broader scope of the
16 Inquiry. The Environmental questions, those
17 people will want to be present. The Northern
18 Assessment Group in that context is working hand
19 in hand with the parties we represent. The par-
20 ties we represent will not duplicate its work and
21 will rely upon it.

22 The Northern Assessment Group
23 advises us that it will take three months minimum per-
24 iod to prepare an appraisal of the application and the
25 documentation which has been put in in support of the
26 application.

27 During that period we will be
28 hiring people, we will be training people. The resource
29 workers which we have which number three or four, will
30 be reading the material in support of the application

1 and identifying points of importance and interest to
2 the community, and at the same time will be starting
3 upon the socio-economic evaluation which is being done
4 primarily by the Native organizations.

5 The Northern Assessment Group
6 and the Native organizations, each taking a part of
7 that separate sphere of responsibility, are working
8 hand in hand. It is an economy of effort in the
9 resources there and we are also doing things as quickly
10 as possible.

11 Assuming then that about
12 January 1st, which is not even the three month period,
13 that the Northern Assessment Group advises us is the
14 minimum period to give us its synthesis and appraisal
15 of the application. Assuming we get it about then,
16 we scheduled a further month to digest their report,
17 prepare the translation, have workshop training of
18 community workers, and then about February 1st the
19 next phase, going to the communities and getting their
20 involvement, bringing the knowledge to them, discussing
21 the issues, responding to questions, trying to develop
22 a consensus, identifying expert witnesses on points
23 that the issue in the formal hearing will take place.
24 We have six communities, Aklavik, Inuvik, Tuktoyaktuk,
25 Sachs Harbour, Paulatuk, Holman Island. We have three
26 or four resource workers and I believe about as many
27 community workers, six community workers.

28 Now, how much time is requi-
29 red there, we estimate again, we are compromising, a
30 minimum period of four months to do that work. Why do

1 we require that time?

2 Let me go through several
3 points as to why.

4 THE COMMISSIONER: You have
5 got three minutes; when the Reporter's tape runs out,
6 you are first on the list tomorrow. Carry on.

7 MR. CUMMING: Well, the first
8 point is that the traditional way and the only meaning-
9 ful way of Native persons communication is a small
10 group, a one to one relationship, and I imagine that
11 your experience in your summer travels has evidenced
12 that as well, so that the work of the resource workers
13 and the community workers in discussing with the com-
14 munity has to be conducted with small groups, families,
15 the traditional type of structure, and remember we are
16 talking about a mammoth project. We have to get a
17 fairly good understanding at the community level. The
18 terminology is completely foreign, not only is there
19 another language, Eskimo and dialect, at least one
20 dialect in respect of that, but just the language in
21 English is foreign to me and I am sure it is foreign
22 to many people in this room.

23 How do you explain to people
24 most of whom have never seen an elevator? How do you
25 use a word that indicates a concept of what an elevator
26 is?

27 If you think that is difficult,
28 how do you communicate the concept from the label, what
29 a pumping station is, things like that. There is noth-
30 ing to compare it with. There is no existing informa-

1 tion base. There is no communication. I am not being
2 in any way critical, I am just saying that is where we
3 are starting at, so time is required.

4 A third point is that people
5 who have been involved in this submission emphasize
6 this, that time is necessary to convince the people
7 that this is a hearing in which they truly can partici-
8 pate meaningfully. For whatever reasons, there is a
9 certain cynicism, I don't mean about the Commission, but
10 a pervasive cynicism of the Native people in respect to
11 the North and northern development and in many ways
12 they consider they are near defeat. They don't believe
13 in a great deal, and they do not have a great deal of
14 confidence, and the work of these people of our organi-
15 zation in the communities, this part of it is simply
16 to take the time to convince them that they can
17 influence the hearing, they can participate meaningfully
18 and to encourage them to do so.

19 Another point is that the only
20 way we can determine the witnesses for the formal and
21 community hearings are to be in respect of specific
22 questions to the work of the community level in this
23 period of time.

24 A further point to remember
25 is that these people, of course, cannot and should not
26 stop what they are doing simply for this development
27 dialogue. Their experience to some extent in the
28 traditional way of life, hunting and trapping, that
29 takes them away from the community for a fair period
30 of time, apart from those who are in wage economy posi-

1 tions.

2 A further point to remember
3 is that it is essential that the developing knowledge
4 and feeling of the communities, so far as possible,
5 they can be tied together, reconciled, a consensus
6 developed, the community councils in those communi-
7 ties fully involved, so that their existing responsi-
8 bilities they don't see as being compromised, so that
9 internal differences can be resolved and a consensus
10 developed and so on, and that takes a great deal of
11 time.

12 All in all, we estimate four
13 months, and we are talking now about the period Feb-
14 ruary 1st to May 30th inclusive. Subsequent to that
15 time, it is necessary, of course, that counsel see
16 expert resource people, tie everything together and
17 organize the evidence from the communities for the
18 formal hearing.

19 In any event, at that time,
20 due to a natural phenomena, that is the break-up, it
21 is just impossible to bring people into or bring them
22 out of some communities some of the time during the
23 period May 1st to June 15th.

24 So, Mr. Commissioner, that
25 is how we arrive at that date of June 15th. I am
26 trying to be fair and I want to emphasize that we have
27 given a great deal of thought to that.

28 Now, some general points
29 beyond those as to our schedule of enabling effective
30 participation, beyond those, beyond the more general

1 point in respect of the time framework.

2 The land use and occupancy
3 report that has been referred to that some Native
4 organizations are producing, in respect of our organi-
5 zation I think it is useful to talk about it for a
6 moment.

7 Over a year ago, a group of
8 scientists were set up and funded by the Government to
9 determine exactly where, when, how and why they hunt and
10 trap and use their land and their perspective in re-
11 spect of land and water, currently and historically,
12 for the whole of the Northwest Territories, including
13 the Northern Arctic. The schedule at that time for
14 completion of that project was, and still is, April
15 1975.

16 About \$500,000.00 has been
17 put into that project, it is quite commendable, it is
18 going, I believe, quite successfully. The documenta-
19 tion produced from that project we consider to be
20 essential in respect of these hearings for several
21 purposes. It is quite fortunate that the work has been
22 underway for such a period of time, and it will be
23 available. Such questions as the value of traditional
24 use, emotional value, simply quantifying economic
25 value, that is the type of data that we are asking of
26 that project and we should have at about that time so
27 that we can respond to reports produced by the appli-
28 cant such as the Gemini North Report that touches upon
29 this.

30 Now, the point has arisen to-

1 today, and I won't go back over it too much, as to why
2 we couldn't have an earlier commencement date at least
3 as to Section I, the technical part.

4 Now, I believe I am correct in
5 saying that Mr. Goldie looked upon Section I as dealing
6 in part, at least, with the location of the pipeline,
7 as to where it will be. The description of Mr. Scott
8 as to what he includes in Section I talks about the
9 deployment, composition of construction crews, which
10 obviously involve socio-questions of impact upon com-
11 munities and people so that, as has been emphasized to-
12 day, while the section approach gives a framework and
13 is worthwhile trying, there are inter-dependent issues,
14 and that when we get to Section I, we are still talking
15 about people, when we talk about where things happen
16 and to whom they happen to. And the Native people have
17 to participate effectly in Section I as with all sec-
18 tions, and just as an aside again, we see the formal
19 hearings as involving as much participation as the
20 community hearings without in any way diminishing the
21 community hearing, and according to what you said, Mr.
22 Commissioner, I want to emphasize the other side. We
23 intend to participate effectively throughout the formal
24 hearing. We believe that they can be held concurrently
25 with the community hearings. We don't care about the
26 community hearings as to when they start so much, we
27 just don't want any hearing to start until we can pre-
28 pare. From that point on they can be concurrent, not
29 simultaneously, but they can be concurrent howsoever it
30 may be in the best interests of all the parties.

1 So, in dealing with Section I,
2 it involves people questions and people should be able
3 to participate in them and they cannot participate until
4 we go through that work schedule and get to that point
5 of knowing what we are doing and what we want to say.

6 The other point I mention, it
7 is extremely difficult for counsel to be here on some
8 points dealing with Section I, and not organizing the
9 remainder of the case. He has no expert to deal with
10 Section I, he has no witnesses, how can he effectively
11 cross-examine. It means it is a very ineffective per-
12 formance.

13 We have a limited number of
14 resource workers. If the resource workers sit here in
15 the proceedings and listen to the evidence with respect
16 to Section I, they can't be out in the community doing
17 what I suggest they should be doing in the community.
18 We cannot wear two hats and we cannot be in two places
19 at one time.

20 So lastly, if I can finish up
21 tonight, Mr. Commissioner, I assume I will have the
22 right tomorrow to say further things. I will just end
23 on that note I struck at the beginning as to the funda-
24 mental purpose of the hearing. It is not sufficient
25 of course, to meet the interests of simply the appli-
26 cant or particular parties. The paramount interest is
27 to meet the interests of the people most dramatically
28 affected by this proposed project. They are the ones
29 who have the most at stake. They have had necessarily
30 the last chance to prepare in the process because the

1 way it has understandably been set up. They need that
2 time, they need that time in fairness, they need that
3 time for an input without which this hearing will be
4 definitely, as Mr. Scott said, the Native organizations
5 are expected to prepare socio-economic impact evidence
6 in the main part, and provide the key element, and that
7 is what the Northern Assessment Group has said in its
8 submission.

9 Mr. Scott also said, and I
10 emphasize his remarks, and I think everybody agrees,
11 that the human aspect is most important. We appreciate
12 the dilemma confronted by the Commission on this point,
13 we appreciate the dimensions of the situation, but we
14 ask, sir, that you consider our request that the formal
15 hearing, no hearing should commence until June 15th and
16 that is tentative, tentative only on the understanding
17 that the documentation be filed in accordance with the
18 schedule you have mentioned.

19 Thank you very much.

20 THE COMMISSIONER: I think in
21 a moment we will adjourn until tomorrow morning at
22 10:00 A.M., and tomorrow, I think I should ask Mr.
23 Waddell to read the written submissions that have been
24 received regarding the question of commencement date.
25 Some of them are very short, and I think in fairness to
26 the people who took the trouble to write the Commission,
27 they should be read. Some of them are fairly lengthy.
28 I would like to give Mr. Scott tomorrow an opportunity
29 to respond to some of the things that have been said
30 since he last spoke.

1 Before we adjourn I would just
2 like to mention, Mr. Goldie, you referred to a statement
3 Mr. Waddell issued during the summer, simply for the
4 benefit of people seeking funding, and the suggestion
5 was made that the Inquiry was prepared to fund only
6 those participants who were opposed to the pipeline.
7 I do not think Mr. Waddell's statement says that, but in
8 any event, the Inquiry is not concerned about the posi-
9 tion that any organization takes with respect to the
10 construction of the proposed pipeline. I should think
11 that others, until we have heard the evidence, would
12 not necessarily have adopted the position of support
13 or in opposition to the pipeline. The point that the
14 Inquiry sought to make for the benefit of those seek-
15 ing funds was simply because funds were provided to
16 one party does not necessarily mean that they will
17 automatically be provided to another, which sees it-
18 self as an adversary to the group that was in fact the
19 beneficiary of funding. The Inquiry has been con-
20 cerned that funding should not be provided to any
21 organization or group merely to duplicate work already
22 carried out by the Government of Canada or Arctic Gas,
23 by universities or by industry or by anyone else.
24 And I think that in the statement that you referred to,
25 Mr. Goldie, the point was made the Inquiry should not
26 consider public funds to be made available to anyone,
27 demonstrating the case for construction of the pipe-
28 line, that was intended to ensure that everyone under-
29 stood that the Inquiry wasn't going to provide funds
30 to anyone who was solely duplicating work already car-

1 ried out by Arctic Gas. I think there should have
2 been another sentence added that would have read some-
3 thing to this effect, that the Inquiry does not con-
4 sider public funds should be made available to anyone
5 who is merely seeking to demonstrate the case in
6 opposition to construction of the pipeline and I am
7 really not concerned about the position adopted by any
8 group before this Inquiry in connection with the matter
9 of funding.

10 The only concern of the
11 Inquiry there is, is there an interest, the organiza-
12 tion has that is seeking funding that ought to be
13 represented. If that interest is properly represen-
14 ted, that is my object, and I hope in funding these
15 interests will have assistance to obtain a fair and
16 complete Inquiry.

17 If there is anyone else here
18 who wants to say something I am afraid we will have to
19 ask them to come back tomorrow, if you would like to
20 give your names to Mr. Waddell.

21 MR. CUMMING: Could I ask
22 recognition because I would like to think about it
23 overnight. We have understood this hearing today
24 that it would not be desirable to have witnesses
25 called, but I want to say we, and I believe the
26 Northern Assessment Group, have witnesses ready to
27 respond, the experts who will be working on our pro-
28 ject, to respond to the schedule and the time require-
29 ment if the Commission or anyone else wanted us to
30 provide that evidence.

1 THE COMMISSIONER: Very good,
2 we will adjourn until 9:30 o'clock tomorrow morning.
3 (PROCEEDINGS ADJOURNED TO SEPTEMBER 13th, 1974, at
4 9:30 A.M.)
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Mackenzie Valley Pipeline

AUTHOR

M835

Inquiry, Vol VII Sept. 12, 74

TITLE

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T. Stikeman

~~Mr. Stikeman~~

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Publications

MACKENZIE VALLEY PIPELINE INQUIRY

IN THE MATTER OF AN APPLICATION BY CANADIAN ARCTIC GAS
PIPELINE LIMITED FOR A RIGHT-OF-WAY THAT MIGHT BE
GRANTED ACROSS CROWN LANDS WITHIN THE YUKON TERRITORY
AND THE NORTHWEST TERRITORIES FOR THE PURPOSE OF THE
PROPOSED MACKENZIE VALLEY PIPELINE

and

IN THE MATTER OF THE SOCIAL, ENVIRONMENTAL AND ECONOMIC
IMPACT REGIONALLY OF THE CONSTRUCTION, OPERATION AND
SUBSEQUENT ABANDONMENT OF THE ABOVE PROPOSED PIPELINE

(Before the Hon. Mr. Justice T.R. Berger, Commissioner)

Yellowknife, N.W.T.

September 13, 1974.

PROCEEDINGS AT INQUIRY

VOLUME VIII

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Vol. VIII

APPEARANCES:

Mr. I.G. Scott, Q.C.,	
Mr. Steve Goudge &	
Mr. Ian Roland,	Commission counsel;
Mr. Anthony &	
Prof. A. Lucas,	Canadian Arctic Resources
	Committee;
Mr. P. Cumming &	
Mr. Bailey	Committee for Original
	People's Entitlement &
	Inuit Tapirisat of Canada;
Mr. D.M.M. Goldie, Q.C.,	
Mr. J. Marshall &	
Mr. Carter,	Canadian Arctic Gas;
Mr. G. Sutton,	Indian Brotherhood of N.W.T.
	and the Metis Association
	of the N.W.T.;
Mr. David Reesor,	Association of N.W.T.
	Municipalities;
Mr. R.J. Gibbs, Q.C.,	Foothills Pipeline Ltd.;
Mr. A.R. Lueck,	Council of Yukon Indians;
Mr. C. Templeton,	Environmental Protection
	Board.

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Yellowknife, N.W.T.,

September 13, 1974.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

THE COMMISSIONER: Let us
get under way, ladies and gentlemen.

I think that before I ask
Mr. Waddell to read some of these matters into the record,
I should call on Mr. Scott to reply and then I have some
matters I want to put to all the participants.

Do you wish to reply?

MR. SCOTT: Mr. Cumming,
I wonder first of all if you could tell me if you finished
yesterday? I'm not quite sure, perhaps I may be wrong.

MR. CUMMING: I abbreviated
what I was going to say. I think it would be appropriate
to leave it at that.

MR. SCOTT: The second
thing, I wondered if anyone else in the room perhaps
wanted to say anything about those matters either before
or after Mr. Waddell?

THE COMMISSIONER: We asked
them to leave their names with Mr. Waddell. I think
there is someone.

MR. SCOTT: Could I defer
until Mr. Waddell and the other submissions?

THE COMMISSIONER: Go ahead
and read them.

MR. WADDELL: There are a
number of submissions that came in by letter or telegram
and I will read them.

1 The first one is from Mrs. June
2 Ebelher, Chairman of the Village of Fort Simpson:

3 "Re Pipeline Hearings

4 The Fort Simpson Village Council feels
5 that the community hearings should be scheduled
6 without further delay. We invite Mr. Justice
7 Thomas R. Berger to hold a hearing in Fort
8 Simpson."

9 And that is the end of the telegram.

10 A second telegram is from Peter
11 Petrasuk, Chairman, City of Calgary, Gas & Power Committee,
12 City Hall:

13 "The Mackenzie Valley Pipeline is vital to all
14 Canadians because of the imminent shortage of
15 gas. You are setting the schedule and procedures
16 for the Mackenzie Valley Pipeline Enquiry. Our
17 concern is that the schedule should be fair to
18 all, but should not create undue delay. The pro-
19 cedures adopted should be such as to establish
20 terms and conditions for the right-of-way permit
21 and avoid delay and duplication of the Natural
22 Energy Board process."

23 That is the end of the telegram.

24 There is a telex from P.W. Kaiser,
25 the Mayor of the Town of Fort Smith, N.W.T.:

26 "This is to confirm that the Town of Fort Smith
27 intends to submit a brief to the Pipeline Enquiry.
28 I would also urge at this time that the hearings
29 proceed as quickly as possible because I feel
30 that this is the fairest way to deal with all

1 concerned."

2 That is the end of that.

3 There is a letter from F. N.
4 Adlem, General Manager, Service North Limited, and then
5 Service North Limited, Post Office Box 31, Norman Wells,
6 N.W.T., dated September 7, 1974, addressed to the
7 enquiry:

8 "Dear Sir:

9 As a growing northern company, Service
10 North Limited would like to see the Arctic
11 Gas Pipeline hearing take place as soon as
12 possible.

13 Respectfully yours,"

14 Another letter dated September
15 9, 1974, to the enquiry from Norwell Developments Ltd.,
16 Norwel Developments Limited, Box 67, Norman Wells, N.W.T.
17 September 9, 1974:

18 "We have been informed that you are to hold a
19 procedural hearing in Yellowknife on September
20 12, 1974, and that the purpose of this hearing
21 will be to set the dates for both your formal
22 and your community hearings. We understand that
23 Gas Arctic wishes to present their evidence immed-
24 iately before you begin touring the communities,
25 and that there is also strong opposition to your
26 proposal to begin hearing evidence without delay.

27 Norwell Developments Ltd. definitely feels
28 that there should be no delay in the commencement
29 of your enquiry, and that you should begin the
30 public discussion immediately. We think that the

1 motives of those groups which seek to delay the
2 official opening of the enquiry are suspect. We
3 take the position that now is the time to begin
4 hearing evidence. The public discussion which
5 your enquiry will generate will be of incalculable
6 value to the people, not only of the Northwest
7 Territories, but of Canada as a whole, and of the
8 United States. Let us begin.

9 We look forward to attending the meetings
10 you will hold in Norman Wells, and hope that our
11 participation in them as citizens and as business
12 men will be worthwhile.

13 Many thanks.

14 Very truly yours,

15 'LEO HARDY'

16 Norwel' Developments Ltd."

17 There is one from Robert E. Bowes,
18 the manager of Northward Air Lines, "A" Division, Norman
19 Wells, dated September 7, 1974:

20 "Realizing the impact a large project such as
21 this one will have on our lives, our community
22 and our company, it is imperative that it should
23 be approved, we make extensive plans for the
24 future. With this in mind, I sincerely urge
25 you to hold any hearings on this matter as soon
26 and as quickly as possible."

27 There is one here from the Fort
28 Simpson Chamber of Commerce, and it reads:

29 "In regard to the hearings pertaining to the
30 scheduling of applications for the building of

1 a gas pipeline down the Mackenzie Valley,
2 we submit the following comment for your
3 consideration.

4 The advantages of the Mackenzie Valley
5 Gas Pipeline would seem to be of such vast
6 importance to all northerners that we would
7 urge that hearings be held at the earliest
8 possible date.

9 There is certain to be a time lapse
10 between the hearings and the actual start
11 of construction, and it could be years be-
12 fore gas starts flowing in the pipe.

13 Coupled with numerous benefits of the
14 construction of the line, there will be a
15 tremendous advantage to villages, perhaps
16 towns by then, to having natural gas avail-
17 able for heating and the generation of power.
18 Could we request that your hearing bring out
19 the question of northern communities being
20 permitted to tap the main gas line for local
21 use?

22 We think that unless we get on with it,
23 there could be a line built by the Americans
24 alone which might have the result of rendering
25 a Mackenzie Gas Pipeline uneconomical, and we
26 would be left holding a chunk of wet moss in
27 a pasture of supplication facing the south.

28 We very sincerely feel that the vast
29 majority of northern people, including the
30 natives, would welcome an early start of

1 construction of the Mackenzie Valley Gas Pipeline."
2 That is signed, "W.M. Casavant, President, and George
3 Turner, Vice-President."

4 A telegram dated September 11th
5 from E.W. King, President Elect, Edmonton Chamber of
6 Commerce:

7 "The Edmonton Chamber of Commerce urges that
8 the scheduling of the hearings with respect
9 to the construction of the Mackenzie Valley
10 Gas Pipeline be arranged in such a manner that
11 the proceedings may take place with a minimum
12 of delay. Because of the benefits that would
13 accrue to Canada by the construction of the
14 Mackenzie Valley Gas Pipeline, we urge the
15 Federal Government to expedite its timely
16 development."

17 I have a somewhat longer brief
18 from Tom Butters, Member for the Western Arctic, Council
19 of the Northwest Territories, and it is headed:

20 "Comments by T. Butters on the Submission
21 proposed by Commission Counsel regarding
22 procedural hearings of the Commission.

23 Venue for formal hearings.

24 I agree that the site of the Mackenzie
25 Valley Pipeline enquiry hearings should, gen-
26 erally speaking, be held in the north. However,
27 since four western provinces have a direct inter-
28 est in the project, I suggest that arrangements
29 be made for hearings to be held in the capitals
30 of British Columbia, Alberta, Saskatchewan and

1 Manitoba, and also in Ottawa.

2 Such hearings should meet the criteria
3 contained in the Preliminary Hearings of the
4 Honourable Mr. Justice T.R. Berger of July 12,
5 1974, which advised that,

6 'I will not diminish anyone's right to
7 be heard... but there will not be any
8 undue delay.'

9 2. Participants.

10 I agree on the definition provided by
11 Commission Counsel of 'participant'.

12 3. Applications.

13 I agree with the statement on applications
14 with the proviso that such applications do
15 not become the mechanism whereby undue delays
16 may be visited on the enquiry procedure.

17 4. Production of documents.

18 I appreciate the necessity for the produc-
19 tion of documents pertinent to the terms of
20 reference of the enquiry, however I foresee that
21 some participants lacking financial or adminis-
22 trative resources may not have in their 'possession
23 or power' the relevant material. I suggest the
24 list referred to in 4.1 should be enlarged to
25 include such documentation that the participant
26 knows to exist, but which for afore-mentioned
27 reasons he is not able to attain and possess.

28 5. Discovery of witnesses.

29 I suggest that the word 'full' appearing
30 at the end of the fourth line be deleted and

1 the word 'synopsis' be used to indicate the
2 Commission's wishes in this regard. As a
3 synopsis is a summary, dispensing with needless
4 details or formalities, a 'full synopsis' would,
5 it follows, be the whole of the evidence to be
6 presented.

7 Order and content of the hearings.

8 1. Overview hearings. The overview hearings,
9 as I understand their purpose, will 'include such
10 matters as the history, culture and economy of
11 the northern peoples, the geography and geologi-
12 cal history of the Mackenzie Valley, the Delta
13 and the Yukon; the climate; the geo-technical
14 aspects of northern construction; terrain types,
15 including perma-frost and resources, renewable
16 and non-renewable.'

17 2. Formal hearings. The manner in which 6-2
18 (i) is set out leaves much to be desired. While
19 probably the section is legalistically commendable,
20 it would seem to relegate to a minor position and
21 priority human concern and interest of northern
22 peoples. It appears to reflect the Commission's
23 obeisance to southern environmentalist groups and
24 organizations rather than the real concerns and
25 aspirations of northern peoples. The draft re-
26 peats the emphasis appearing in the Pipeline
27 Guidelines developed by the Federal Government
28 which received so much criticism from northern
29 residents. It is regrettable that the Mackenzie
30 Valley Pipeline Enquiry could not see fit to put

1 people first, or at least to emphasize that
2 the main responsibility of the Commission is
3 to ensure that should the project be approved,
4 it would in inception and conception benefit
5 the people of the Northwest Territories and
6 improve the quality of life enjoyed by them.

7 I would have hoped that Section 2.3 would
8 have included the advice that the special counsel
9 would not only accept responsibility for advising,
10 'the public generally of the relevant subject
11 area to be addressed at the particular hearing,'
12 but would also communicate, or arrange to have
13 communicated the gist of the representations
14 made during the hearings relative to both
15 hearings conducted in the Territory and in
16 other Canadian jurisdictions.

17 3. Community hearings. I suggest, as I
18 have on past occasions, that the success of
19 the community hearings be directly related to
20 the amount of enquiry material reaching the
21 smaller communities and the manner and context
22 in which it is communicated.

23 Commencement data. In Section 1 of the
24 Commission counsel's draft proposal, the enquiry
25 reserves the right 'to conduct hearings in
26 Southern Canadian communities for the purpose
27 of allowing residents of those communities to
28 make their submissions,' but concludes that the
29 site of the formal hearings should 'generally
30 speaking, be in the north'. I suggest there

1 is some advantage in tentatively scheduling
2 those formal hearings that may be conducted
3 in other jurisdictions, and furthermore, suggest
4 there is some advantage in holding such hearings
5 prior to the formal hearings conducted in the
6 Territories. The advantage in such an arrange-
7 ment is in the main twofold in that

8 (a) northerns would gain some prior indication
9 of the position of Southern Canadians regard-
10 ing the C.A.G.S.L. project, and

11 (b) publicity attendant on such hearings would
12 inform and enlighten northern residents
13 relative to the ramifications and implica-
14 tions of the Mackenzie Valley Natural Gas
15 Pipeline proposal.

16 Secondly, it will be much easier for northern
17 participants to provide rebuttal or balance to the
18 arguments of Southern Canadian interests if such
19 arguments and positions are made known to the
20 enquiry prior to the holding of the formal hearings
21 in the Territories.

22 8. Order of examination. The leading paragraph
23 in this section, and I quote, is most disturbing:

24 'At the formal hearings, as a general
25 rule, Arctic Gas will lead its evidence
26 first, followed by various counsel for
27 and the native peoples, various counsels
28 for and the environmental groups, and
29 Commission counsel. Counsel for/or
30 Arctic Gas will be entitled to reply."

1 The statement is disturbing because it ignores the
2 existence of a large body of opinion in the North-
3 west Territories which supports the pipeline
4 project, conditionally. This situation, I indica-
5 ted to you in my submission of May 3, 1974, on
6 the occasion of your Preliminary Hearing. In
7 view of a statement in Section 8, I assume that
8 the representation made by myself initially has
9 been overlooked by Commission counsel. I repeat
10 my comments of May 3, 1974, hereunder:

11 'Individuals or organizations making either
12 oral or written submissions to the Mackenzie
13 Valley Pipeline Enquiry Commission will un-
14 doubtedly have considered at some length
15 the question "Do I (we) support or oppose
16 the Natural Gas Pipeline construction pro-
17 ject?"

18 I suggest that the answer to this question
19 by the majority of N.W.T. residents or
20 resident organizations will be "Yes,
21 conditionally."

22 I believe that all residents of the North-
23 west Territories, and particularly of the
24 Mackenzie District, recognize that the
25 Mackenzie Valley Gas Pipeline will increase
26 the rate of change presently being experienced
27 in northern communities. Therefore, under-
28 standably, residents of the Territories will
29 seek to have regulations imposed upon the
30 project both during construction and

1 throughout the operation phase, which will not
2 only seek to provide for immediate and future
3 benefit of residents of the Territories, but
4 also to ensure that any change that takes place
5 will be at a rate compatible with the life-styles
6 and aspirations of nearby communities.

7 With that determination uppermost, it is
8 necessary that residents of the north have avail-
9 able to them research and advisory agencies ser-
10 vices which would assist them to realize the
11 greatest possible return, individually and
12 collectively, from the pipeline development
13 program. If such advice, information and
14 regulatory authority is not made available to
15 the people of the Territories through their
16 democratically elected institutions, municipal
17 and territorial, prior to the time the agreement
18 is concluded between the Federal Government and
19 the Canadian Arctic Pipeline Company, the people
20 of the north will have been sold short. Required
21 are funds and professional advice to northern
22 peoples so that they may participate in, relate
23 to, and assist in arriving at decisions regarding
24 their present and future condition.

25 I suggest the answer of the people of the
26 north to the C.A.G.S.L. application is 'Yes,
27 we support the concept conditionally and those
28 conditions when implemented, must enhance and
29 improve the quality of life enjoyed by the
30 people of the Northwest Territories."

1 Relative to the foregoing remarks, I have
2 approached the Honourable Jean Chretien and sub-
3 sequently, the Honourable Mr. Justice T.R. Berger
4 for financial assistance to examine and develop
5 the conditions for the project which will provide
6 most benefits to the people of the Northwest
7 Territories socially, economically and politically.

8 Mr. Chretien, in replying to my request for
9 financial assistance, indicated to me that such
10 application should be made to Commissioner T.R.
11 Berger. On August 17, 1974, by letter I wrote
12 to Justice Berger requesting funds to research
13 the conditions which I believe members of my
14 constituency would approve an application to
15 construct a natural gas pipeline through the
16 Mackenzie Valley. Although I have not yet received
17 a reply from Justice Berger regarding my request,
18 I suggest that there is a large group of residents
19 in the N.W.T. who would wish to participate in
20 the Mackenzie Valley Pipeline Enquiry, but who
21 are unable to do so because they lack the financing
22 either available to or provided to other interes-
23 ted organizations or groups for study and research."

24 There is a submission from
25 the Inuvik & District Chamber of Commerce to the proced-
26 ural hearing of the Mackenzie Valley Pipeline Enquiry.

27 "The Inuvik & District Chamber of Commerce submits
28 that:

29 1. The Commission counsel's procedural proposals
30 do not fully consider the residents of the north

1 in the formal hearings as the effect of pipeline
2 construction on the people and human environment
3 will be heard last, after several other subjects
4 such as engineering, physical environment, and
5 the natural environment. As the enquiry's
6 prime concern is reputed to be for the residents
7 of the north, people should be given a more
8 prominent consideration in the hearings.

9 2. The Commission counsel's procedural pro-
10 posals do not acknowledge or allow for the pre-
11 sence of responsible municipal and Territorial
12 Governments in the north as in the order of
13 examination it states that:

14 'Arctic Gas will lead its evidence first,
15 followed by the various counsel for and
16 the native peoples, various counsel for
17 and the environmental groups, and Commis-
18 sion counsel,"

19 with no consideration for other responsible
20 northern organizations such as the Mackenzie
21 Valley Community Councils, the Northwest Terri-
22 tory Council, the Northwest Territorial Govern-
23 ment, the Northwest Territorial Association of
24 Municipalities, or the Northwest Territory Cham-
25 bers of Commerce. A much wider range of northern
26 participants must be structured into the hearing
27 procedures for the enquiry to be effective and
28 of benefit to the north.

29 The procedural proposals give a suitable
30 starting date in October, but have no completion

1 date for the hearings, or decisions of the
2 enquiry. Time is of the essence for the initia-
3 tion of the Mackenzie Valley Gas Pipeline as
4 there are several competing alternatives such
5 as the El Paso-Alaskan proposal and the Alberta
6 Tar Sands Developments, which could delay Macken-
7 zie Valley Gas Pipeline construction for five to
8 twenty years, should a decision not be arrived at
9 within a reasonable time. The Inuvik & District
10 Chamber of Commerce believes that the delay of
11 an enquiry decision beyond the end of March, 1975
12 will eliminate the possibilities of the Mackenzie
13 Valley Pipeline construction and overall northern
14 progress for at least ten years. A completion
15 date by the end of March, 1975 is requested.

16 4. Although the Inuvik & District Chamber of
17 Commerce and others have formally requested that
18 enquiry funds be provided to responsible northern
19 groups such as the N.W.T. Association of Muni-
20 cipalities and no funds were provided, it is
21 noted in the July 31st issue of the 'News of the
22 North' that the enquiry gave a \$200,000 grant
23 to the Northern Assessment Group (N.A.G.) As
24 the function and composition of this group is
25 completely unknown to the Inuvik community and
26 is presumably made up of outside interests,
27 the Inuvik & District Chamber of Commerce again
28 formally requests that some comparable funding
29 be made available to responsible groups in the
30 north who have asked for funds but have been

1 denied.

2 While the enquiry has said, in effect,
3 that only groups in open opposition to the
4 Mackenzie Gas Pipeline proposal will be funded,
5 the Inuvik & District Chamber of Commerce takes
6 strong exception to this policy as it negates the
7 democratic process and leaves the enquiry without
8 representation from an apparent majority of
9 northern residents who, through their elected
10 representatives, have indicated support for the
11 Mackenzie Gas Pipeline with qualifications.

12 The Inuvik & District Chamber of Commerce
13 requests that balanced hearings be facilitated
14 through the structured participation of respon-
15 sible groups such as the N.W.T. Council, the
16 N.W.T. Association of Municipalities, and the
17 Community Councils from the Mackenzie Valley."

18 There is another brief,
19 a letter really, from Mr. and Mrs. William Smith of
20 Old Crow. I read it, Mr. Commissioner. It is in the
21 nature of really a submission to the main enquiry on
22 land claims, and I would propose to have the enquiry
23 typed up and file it on the record.

24 THE COMMISSIONER: Yes, it
25 deals with the merits. It can be read at the formal
26 hearings, or at the community hearing in Old Crow. These
27 people live in Old Crow. You can write a letter to
28 them and explain why it wasn't read today.

29 All of the letters that
30 Mr. Waddell read will be marked as exhibits in the

1 order in which they were read.

2 Before we pass on, let
3 me deal with the last submission from the INuvik & Dis-
4 trict Chamber of Commerce. I think it important at
5 least to attempt to run these sort of allegations to
6 earth, so that they don't keep going around without being
7 answered.

8 The Innvik & District
9 Chamber of Commerce have made requests for funding of
10 the Minister and of the Enquiry, but they have not at
11 any time reduced their request to any form that would
12 enable them to be considered. It should be pointed out
13 that the Association of Municipalities has, at the
14 Commission's request, undertaken to prepare a detailed
15 project relating to the matters that they wish to pursue,
16 studies that they want to undertake, the things that they
17 need money for and the ways in which they intend to spend
18 it.

19 I think it should be under-
20 stood that this enquiry really cannot just hand out
21 public funds to people who think that they should get
22 public funds.

23 The enquiry is really not
24 prepared to consider such funding unless they are accom-
25 panied by detailed statements of the concern of the
26 organizations involved, the needs they have, the programs
27 they intend to undertake, and as well, to establish a
28 system of accountability for the expenditure of funds.
29 That is something that not only the enquiry insists upon
30 but the Treasury Board of the Federal Government insists

1 upon, and no funds have been provided except pursuant
2 to applications that have undergone this process.

3 It should be understood
4 that it really isn't enough to write a letter to the
5 enquiry and say, "I want some money because you gave some
6 money to somebody else, you should give me some money."

7 The other problem with
8 organizations such as the Inuvik Chamber of Commerce is
9 that the enquiry has submissions from the Territorial
10 Chamber of Commerce which are under consideration, and
11 I may say sympathetic consideration, and Mr. Waddell has
12 in fact conferred with Mr. Sigler, the president of the
13 Northwest Territories Chamber of Commerce, with a view
14 to assisting the Chamber; but from the enquiry point of
15 view I think it should be understood that the enquiry
16 very much prefers to deal with an organization that
17 represents the whole of the Mackenzie District, and not
18 to try to deal with requests from every Chamber in every
19 community along the Mackenzie River, and in the Mackenzie
20 Delta.

21 I think it is also important
22 to make this point that in the submission of the Inuvik
23 & District Chamber of Commerce relating to participation
24 by northern groups, reference is made to the Northwest
25 Territorial Council. Well, it is for the Council of the
26 Northwest Territory to determine the extent to which it
27 wishes to participate, if at all. That is not for me.
28 That is for the Council but I may say in my travels I
29 have had an opportunity of meeting Mr. Butters, Mr.
30 Sebastian, and Mr. Cyril, also members of the Council,

1 and I have expressed the view to all of them that the
2 enquiry would be happy to hear from them about their
3 views relating to the issue before the enquiry, but it
4 should be understood that it is not for me to tell the
5 Council of the Northwest Territories what to do.

6 Incidentally, Community
7 Councils, from every community that I visited, I have
8 called upon the Mayor or the Chairman of the Settlement
9 -- assuming I could find him at home -- and have indi-
10 cated that the enquiry is most anxious to hear from the
11 elected representatives in each community, from Yellow-
12 knife, Hay River, Fort Smith, all the communities on the
13 Great Slave Lake, along the Mackenzie Valley and in the
14 Delta such as Old Crow, and I may say that I have been
15 courteously received by all these people.

16 In my travels in each
17 community I have also called on the band chief and
18 indicated my view that I am most anxious that the Band
19 Council should express their views about the issues
20 coming before this enquiry at the community hearings.

21 I think I can understand
22 these sort of things getting started, but I think it
23 is important to try to run them to the ground and put
24 them to rest at an appropriate time.

25 The Inuvik & District
26 Chamber of Commerce also made the point that Mr. Goldie
27 made yesterday on behalf of Arctic Gas, it was in critic-
28 ism of Mr. Waddell's statement issued on August 14th
29 regarding funding. I think it is worthwhile repeating.
30 In that statement it is said:

1 "It is open to any person or organization supporting
2 or opposing a pipeline, or even having an open
3 mind on the subject,"

4 I think that was an attempt to be ironic,

5 "to advance a proposal for a study that would be
6 helpful to the enquiry, if the proposed study is
7 not already being undertaken by the Federal
8 Government, by the Territorial Government or
9 one of the universities, by Arctic Gas or by
10 some other party to the enquiry, the enquiry
11 will give the proposal serious consideration.
12 If the enquiry decides the proposed study ought
13 to be acted upon, it will commission the study.
14 The study may be carried out by a person or
15 organization seeking funding for that purpose
16 if they are sufficiently well organized to
17 carry it out themselves. If they are not,
18 others will be engaged to carry out the study."

19 I don't think the language
20 could be plainer, and I think it would be helpful if
21 an attempt were to be made to read these through --
22 these things through from beginning to end.

23 Now I was going to say,
24 Mr. Scott, before you begin, I think I might express
25 these views as well and hear all counsel upon them.
26 It appears to me at this stage at least all counsel seem
27 to be in agreement with Mr. Scott's proposal to divide
28 the formal hearings into four phases without rigorously
29 seeking to segregate one phase from the other.

30 On reflecting upon these

1 matters last night, at least while waiting for the water
2 to be turned on, it occurred to me also we now appear to
3 have 11 major participants, and it appears to me that
4 all counsel agree that the rules that are to be imposed
5 relating to the formal hearings and discovery and so forth
6 should apply to those 11 major participants.

7 First of all, there is
8 Commission counsel, who is responsible, among other
9 things, for adducing the evidence of the assessment
10 group, producing all the reports and studies carried out
11 by the Government of Canada, and in addition under the
12 preliminary ruling, responsible for bringing forward the
13 evidence relating to the location and the extent of the
14 gas fields in the Delta, the likely extent of further
15 gas exploration in the Delta, and the Beaufort Sea,
16 and the likely location and design and construction of
17 the gathering lines and processing plants that will be
18 needed to render the gas acceptable to the trunk pipe-
19 line, and the social and environmental and economic impact
20 of the development of the gas fields and the construction
21 that those lines will have on the Delta and elsewhere in
22 the north.

23 Commission counsel, to put
24 it mildly, is a major participant.

25 Secondly, we have Arctic
26 Gas.

27 Thirdly, we have CARP,
28 which has undertaken -- Mr. Anthony and Mr. Lucas --
29 to produce all of the reports and studies in possession
30 of the Northern Assessment Group and to submit to the

1 discovery procedure to be established by the enquiry.

2 Fourth, we have the Environ-
3 mental Protection Board, and I am not suggesting in
4 listing the Environmental Protection Board in that way
5 that Mr. Templeton and his group should obtain counsel.
6 I am simply saying they are obviously going to be a
7 major participant.

8 Fifth we have the Indian
9 Brotherhood.

10 Sixth the Metis Association.
11 And seventh, we have the
12 Inuit Tapirisat.

13 Eighth, we have C.O.P.E.
14 And nineth we have the
15 Yukon Native Brotherhood.

16 Tenth we have Alberta Gas
17 Trunk.

18 And 11th we have the
19 Association of Municipalities of the Northwest Territory.

20 Those are the major parti-
21 cipants that we appear to have at this stage.

22 Now, that is not to say
23 that other organizations may not, from time to time, take
24 part in the formal hearings, and that is not in any way
25 to diminish the importance of the community hearings
26 which are as important, if not more important, than the
27 formal hearings. But it appears to be agreed that the
28 rules of the enquiry established for the formal hearings
29 will apply to all these 11 major participants and it
30 appears to be agreed that the rules that are to be applied

1 to the formal hearings for those major participants will
2 not apply to anybody at the community hearings. Maybe
3 that was obvious to all you people yesterday, but I thought
4 I would write it down and tell you my impression of how
5 far we had gotten so far.

6 Now could I say as well
7 that I have formed some impressions about the community
8 hearings that I think I should offer you, not so that
9 you can comment today, you can do that if you wish, but
10 so you can consider what I have said.

11 The native organizations
12 argue that they should be entitled to say to this enquiry,
13 "No pipeline should be built until our land claims have
14 been settled."

15 Now that is an argument
16 that I have said they are entitled to pursue in this enquiry.
17 But it seems to me that if Arctic Gas, Alberta Gas Trunk
18 are to be able to meet that argument, there should be
19 evidence adduced by the native organizations regarding
20 the nature and extent of their land claim. The native
21 organizations have undertaken land use studies. It
22 seems to me that consideration should be given to present-
23 ing those land use studies at the formal hearings, so that
24 Arctic Gas and Alberta Gas Trunk can then see what they
25 are up against so that they can indicate the measures they
26 are prepared to take to ensure that, as Mr. Goldie claims
27 at the outset, the pipeline can be built without prejudice
28 to native claims.

29 I should say that when I
30 visited Norman Wells I was shown a map that one of the

1 brotherhood field workers, Mr. Pletchie, was preparing.
2 It revealed trap lines, fishing areas, hunting areas,
3 fish camps and so on. That kind of evidence, it seems
4 to me, and I hasten to add that I have forgotten the
5 details so that no one has given me a sneak preview of
6 any evidence, but Mr. Pletchie was kind enough to offer
7 to show it to me and I was curious to see it. That
8 kind of evidence, it seems to me, could be advanced by
9 the native organizations at the formal hearings.

10 The two pipeline companies
11 could then indicate at the formal hearings, call evidence
12 to show what measures they are prepared to take to safe-
13 guard those native interests or ensure that the pipeline
14 can be built without prejudice to any claim or to say,
15 if it turns out to be the case, that it cannot be built
16 without prejudice to his claim or without some damage
17 to those native interests. It seems to me then, at the
18 community hearings, in each community we would be able to
19 proceed in this way.

20 First of all, if the C.B.C.
21 in co-operation with the parties, has broadcast on a
22 regular basis in English, and in all of the native
23 languages a useful summary of what has been said at the
24 formal hearings, then the people living in each of the
25 communities will have a basis of some idea about the
26 submissions that have been made about their own communi-
27 ties. If we can video the formal hearings, and provide
28 translation, there will have been an opportunity in all
29 of the communities, including those which do not have
30 radios, to see exactly what the experts (if such they are)

1 have said at the formal hearings, and when we get to the
2 community hearings, we can hear not only from the elected
3 counsellors whether they be a member of the Municipal
4 Council or the Band Council or trappers and hunters and
5 fishermen, all others in the community interested in these
6 matters.

7 Another question -- and
8 I'm taking some time about this because I have been giving
9 some thought to this question of community hearings during
10 my travels in the summertime -- suppose that you have
11 experts called by Arctic Gas to say that cariboo will
12 cross a pipeline right-of-way. Suppose you have experts
13 called by C.A.R.P. or by the Environmental Protection
14 Board who say cariboo will not cross a pipeline right-of-
15 way. I have chosen that, as it appears to me almost
16 a trade example of the kind of dispute one hears throughout
17 the north. The people in the communities will have
18 hears what these experts, whether from the south or the
19 north or the east or the west, have said, and then the
20 people in the communities who live there and who presum-
21 ably have seen cariboo crossing seismic trails or declining
22 to cross them, or going half-way and turning back, whatever
23 the case might be, can tell us what their experience has
24 been.

25 Presumably we will hear
26 evidence from Miss Carney and her staff about the Gemini
27 North Report. Summaries of what she and her staff have
28 said will be broadcast, video tapes will be provided
29 and when we go to the communities, presumably the native
30 organizations will call evidence that they dispute what

1 is said in the Genini North Report and will call people
2 in the community to say what their own knowledge of the
3 matter is, what their experience has been, and let me
4 repeat this, whether we hold a community hearing in
5 Yellowknife or in Tedji Lake, I hope that we will hear
6 not only from the elected counsellors, municipal or
7 members of the Native Council, but from anybody else
8 that has something to say about this.

9 Now I have asked Professor
10 Jackson to act as co-ordinator of the native hearings
11 because in fairness to everybody else, it seems to me
12 that when we are dealing with predominantly native commun-
13 ities, dealing with community hearings in those places,
14 the native organizations should indicate to the Committee
15 what their views are and how to do about holding communi-
16 ty hearings in each place.

17 In fairness to all other
18 participants, they should be advised and there will be
19 some means for them to discuss these things with repre-
20 sentatives of all parties, so it is not necessary for
21 all parties to come before me and argue about it all the
22 time, and in larger centres such as Yellowknife or Hay
23 River, I would suspect that the Association of Municipali-
24 ties -- speaking now of those communities with predominant-
25 ly white populations -- would come to the Co-Ordinating
26 Committee on the community hearings and give some indica-
27 tion how they think the community hearings should proceed
28 there; and then everybody else, including representatives
29 of the native organizations, could participate in the
30 discussions about the hearings in those communities

MRS. McQUARRIE: Perhaps
you are not all familiar with mental health in the

1 Northwest Territories, but we are a division of the
2 Canadian Mental Health Association which is a volunteer
3 organization concerned with mental health. Now we
4 represent, believe it or not, a cross-section of the
5 residents from all walks of life in the Northwest
6 Territories. We have all come together because of our
7 concern for the lack of mental health facilities and
8 services in the Northwest Territories. We believe that
9 very little attention has been given to determining the
10 psychological impact and industrialization on native and
11 non-native people in isolated communities.

12 Polarization is occurring
13 in the north, and tensions are rising. I believe that
14 problems will certainly increase with the influx of
15 workers from the south, the dislocation of the native
16 people as they move to the jobsite.

17 Now the Association has
18 made a request to the Commission to at least consider
19 the possibility of researching what has been done in the
20 field of psychology in the Northwest Territories so that
21 we can make provision now for the fall-out which occurs
22 or may occur when the line is built. Now we are a
23 non-partisan group, I would like to say at the outset,
24 we are only concerned with the mental health of the people.

25 Our Association would like
26 to suggest that in your debating you go slowly in order
27 to give the people a chance to adapt to the rapid changes
28 that are occurring not only in the Mackenzie area of the
29 Northwest Territories, but industrialization is taking
30 place throughout the north and people who have not been

1 exposed to the southern influence and many natives in the
2 higher Arctic communities presumably may have the great-
3 est difficulty keeping up to the technology as you from
4 the south are having in your own lives in dealing with
5 rapid changes in industrialization and technology.

6 For the first time -- this
7 is the commercial -- for the first time in the history of
8 the Northwest Territories the volunteers in our ward this
9 year is made up of 29 members from across the Northwest
10 Territories and will be meeting in Yellowknife tonight and
11 Saturday morning. Saturday morning, if any of you are
12 interested, the topic is,

13 "Resources available for people,"
14 and the group will probably identify priorities. I would
15 like to emphasize at the same time, in many of the
16 communities there is no provision for marital counsellors,
17 youth counselling, anything to do with the human needs
18 really are so minimal now, and if you are interested in
19 knowing where we are at as far as resources, to deal with
20 human concerns, I would like you to attend tomorrow, and I
21 do hope that in your deliberations you will at least
22 consider the mental health of the people because the people
23 themselves will either have to work on the line or certain-
24 ly will have to live with it.

25 THE COMMISSIONER: Mrs.
26 McQuarrie, did you say the meeting was tomorrow?

27 MRS. McQUARRIE: The meeting
28 begins this evening at the Explorer Hotel, Conference
29 Room "D". We would not have been able to hold it there
30 had the Explorer Hotel not been generous enough to donate

1 the space. This evening will be a presentation to the
2 voluntary Association. We are the first Territorial
3 wide volunteery Association, believe it or not. Tomorrow
4 morning we will deal with:

5 "Community Resources for Troubled People."

6 Since there is difficulty in identifying "X" number of
7 troubled people, we believe that we are all in trouble
8 so therefore --

9 THE COMMISSIONER: You have
10 come to the right place.

11 MRS. McQUARRIE: -- that
12 session begins at 9 A.M. and we have excellent northern
13 resource people and you will be very welcome.

14 THE COMMISSIONER: Thank
15 you. I should say that Mrs. McQuarrie's organization sub-
16 mitted last month a detailed proposal to the enquiry re-
17 garding their request for funds, and so far the only
18 organization mentioned in the letter from the Inuvik
19 Chamber of Commerce that has submitted a detailed budget-
20 ary proposal, and the Mental Health Association's request
21 is under consideration. It is something, Mr. McQuarrie,
22 that Mr. Waddell will today or tomorrow be speaking to
23 you about, because there are some things that require
24 further discussion.

25 Mr. Templeton, I think you
26 wanted to say something else, and it might be a good idea
27 if you did now, before we get back to the others.

28 MR. TEMPLETON: I only
29 have two points.

30 (1) I believe Mr. Scott's group are going to do some

1 research and investigation. I would hope that their
2 research and investigation will be put in testimony along
3 with all of the others.

4 (2) The other point was, I think you said this morning
5 that four points had been accepted as the division of
6 how to present the evidence, and we will, of course,
7 go along with that. I think you also said that there
8 had to be a certain amount of leeway and I would hope
9 that would extend to carrying on what I think the impact
10 assessment process and the environmental assessment and
11 the socio-economic and environmental impact assessment
12 process is really to assist in making a decision on whether
13 any project should go ahead in the first place, and if
14 it goes ahead, how it should go ahead so there will be
15 reasonable and environmental protection, and therefore
16 I would hate to think that all of the discussion and the
17 conclusion was ended at protecting impact, environmental
18 impact. I think that the process, so that the decision-
19 maker in making certain decisions, is one which would
20 carry on to how is the environmental protection going to
21 be achieved?

22 So I just would hope that
23 those four points can be stretched into the implementation
24 of measures and the enforcement of measures in addition
25 to impact.

26 THE COMMISSIONER: That is
27 an excellent point, Mr. Templeton, and I have no doubt
28 it is in the forefront of everyone's mind.

29 MR. GOLDIE: It will be
30 covered in our evidence.

THE COMMISSIONER: Well, that was a thought, not a direction, simply for the consideration of all the native participants. If there is a trapline or a fishing camp, or an area used for hunting or -- and this I gather is included under the heading of "land claims" -- simply land or water that the native peoples say is part of their claim, it seems to me they should indicate these matters, indicate these things during the course of the evidence to enable Arctic Gas and Alberta Gas Trunk, it has taken the same position on these matters as Arctic Gas. You may find yourselves Siamese Twins in some matters and at odds in other matters. It seems to me it gives you an opportunity to call evidence before the enquiry as to what measures are proposed to be taken to ensure a trapline is not disturbed or a fishing area isn't spoiled, or a stream is obstructed, that kind of thing. If there is certain land or water between claims without any use being made of it, no doubt there is a very large territory that is regarded as traditional hunting and fishing and trapping grounds,

1 it is acknowledged native rights. You might want to
2 deal with that as well.

3 I may say in making these
4 remarks this morning I am hoping to advance the position
5 so that all of you have a better idea of what you ought
6 to be prepared to deal with, and I don't think I can
7 say much more than that about it.

8 MR. GOLDIE: I wonder if I
9 might say something that might encourage my friend, Mr.
10 Cumming, to comment? I take it from what you said just
11 a minute ago you were speaking not too much about the
12 validity of the land claims, but evidence of land use,
13 or there might be a claim with respect to land in gross.

14 THE COMMISSIONER: Well,
15 let me go back a minute. Mr. Cumming said yesterday,
16 and Mr. Sutton, that there is a vast land use and occu-
17 pation study underway. It will be ready April 1, 1975,
18 and Mr. Cumming made it clear, I think, it was the inten-
19 tion of his client to bring that land use and occupation
20 study before the enquiry and I think that is something
21 that, subject to what counsel may say, is to be welcomed,
22 and I think it will give Arctic Gas an opportunity to
23 come to grips with an issue that may not seem altogether
24 without difficulty.

25 MR. GOLDIE: I would like
26 to make one other observation, and that might suggest
27 something to Mr. Cumming.

28 My client has accumulated
29 a very substantial amount of information with respect to
30 land use and the approach has been that whether the land

1 use, for let us say, trapping purposes is a matter of
2 right by the people who make use of it, or whether it is
3 over Crown land by licence is really immaterial. The
4 approach my client is endeavoring to take is to disturb
5 that as little as possible regardless of the proprietary
6 definition of the person, whether it is a proprietary
7 interest or the use of it.

8 I propose -- I am over-
9 simplifying this -- but I propose that is certainly one
10 of the reasons, I have said if our proposal could be con-
11 sidered without prejudice to the proprietary interest of
12 the person who is presently making use of that trapline
13 or that land for resource purposes.

14 Now, with respect to a
15 claim for land in gross then the position is made again,
16 we take measures to disturb that land and its use for
17 whatever purpose, whether established now or later or
18 foreseeable as possible and if we do disturb it and com-
19 pensation is payable, then the payment of that compensa-
20 tion awaits the determination of the claim for that
21 land in gross.

22 It seems to us -- my client
23 -- in its approach to this question that it would be not
24 only presumptuous but unproductive for it to become in-
25 volved in the determination of the question of rights.

26 THE COMMISSIONER: Could I
27 interrupt you, Mr. Goldie? I think that the native land
28 claims are essentially based on traditional use and
29 occupation, so that to a great extent, I suppose it would
30 be said there is no real distinction between what you

1 call land use and claims for land, so to speak, in gross.

2 My concern is that to be
3 fair to all parties that there should be some basis for
4 dealing with the argument that there should be no pipeline
5 development until the land claims are settled. It is
6 not for me to determine the validity of the land claims.
7 I am bound by the statements that have been made by the
8 Prime Minister and by the Minister of Indian Affairs and
9 Northern Development regarding land claims, that is the
10 statements made in the last year or two, and their willing-
11 ness expressed to negotiate a settlement with the native
12 people of the Northwest Territories and the Yukon.

13 We may be able to provoke
14 Mr. Cumming, who has written a book on the subject, to
15 say something about it, although there may be hazards
16 in that.

17 MR. GOLDIE: Other than
18 giving us the name of the publisher, I am anxious to
19 hear him because your comments, with respect, have been
20 of assistance to me, the nature and the scope of the evi-
21 dence that you are referring to; but I would be grateful
22 if Mr. Cumming did in fact make some observations.

23 THE COMMISSIONER: It should
24 be understood I am not asking you, Mr. Cumming, or you,
25 Mr. Goldie, to say anything you would be bound by. I
26 think we have got to come to grips with it somehow and
27 if we had assistance it would be helpful.

28 MR. CUMMING: I agree with
29 you entirely, Mr. Commissioner, it is worthwhile to dis-
30 cuss this now. Let me put forth my thoughts at this time.

1 I see our problem as, know-
2 ing what evidence we have to bring forward before the
3 Commission, so that we can be sure you have the premises
4 to act upon, howsoever you may act upon in making your
5 recommendation and at the same time, of course, all
6 others, Gas Arctic in particular. Now in enabling you
7 to have those premises, I look upon them somewhat in the
8 fashion of Mr. Goldie, two dimensions, land ownership in
9 the sense of real property proprietary right as being
10 one question, and the second question being land use.

11 Now, at the same time I
12 appreciate your point there is not a neat distinction
13 between the two. Let me talk about the second category
14 first because that certainly, I think what you are
15 getting at there is people out there who use the land in
16 the way you have described, and they may or may not be
17 affected by the pipeline and other things that go with
18 it, and that is pertinent to the enquiry and the condi-
19 tions that might be attached as a term to the recommenda-
20 tions you might make.

21 Now the land use and occu-
22 pancy study in particular, together with whatever other
23 reports might be prepared and the viva voce evidence
24 would be pertinent to that question. I might say that
25 that land use and occupancy study in the strict sense is
26 owned by an incorporated researcher under contract, I
27 believe, jointly to the Government of Canada and the
28 Inuit Taparissat of Canada so I can't state what their
29 position might be, but I would certainly recommend that
30 they produce the report.

1 THE COMMISSIONER: Or make
2 an application for a subpoena.

3 MR. CUMMING: I just wanted
4 to be careful, I would certainly recommend that the
5 report as it affects the Western Arctic area and it is
6 in the broad public interest. It has been funded by
7 public funds and it would be appropriate that that report
8 should do a great deal in providing that evidence, and
9 provide the premises that may suggest recommendations and
10 conditions in your decision-making.

11 On the other question, the
12 question of proprietary right, the ownership question,
13 again that report may suggest from a factual standpoint.
14 I only get concerned about this, that you might consider
15 it necessary to have strict p-oof, say anthropological
16 or historical evidence to flush out the factual claim
17 and of course that would take time, but it would assist
18 us if we could have an idea, without pre-judging the issue,
19 howsoever you might decide the thing as to what of those
20 premises are considered necessary, what is required from
21 a proof standpoint.

22 I myself would like Gas
23 Arctic to think about this. I think to some extent that
24 is a needless waste of time and expense in the hearing
25 to require that strict proof because on that question I
26 think it is irrelevant to them, and I say that --

27 THE COMMISSIONER: You are
28 speaking of the anthropological --

29 MR. CUMMING: That we have
30 to establish a factual claim that would satisfy a Court

1 of Law that, assuming the legal arguments are there,
2 that there is a legal native title giving ownership.

3 I say that for this reason
4 that Gas Arctic's application, if it goes through the
5 whole process and eventually is approved by the Cabinet,
6 and the right-of-way issues, permit issues, in effect it
7 is an expropriation so that while it goes to the question
8 of compensation, the Government of Canada will ultimately
9 resolve its problem of ownership of any land in connec-
10 tion with the pipeline so I would think Gas Arctic should
11 say, and I suggest this, "We are prepared to admit for
12 the purpose of the application that in respect of land
13 traditionally used and occupied that the native people
14 have aboriginal title."

15 MR. GOLDIE: Have what?

16 MR. CUMMING: Have abori-
17 ginal title. That would remove the necessity -- if it
18 is a necessity, and I am not sure it is -- that would
19 remove our concern about there perhaps being a necessity
20 to spend a great deal of time proving as, say in the
21 Nitka case, leading evidence of that nature.

22 Now the second part of that
23 would be, if we get into that ball game on that first
24 question, then there has to be extended legal argument as
25 well on the question of whether there is such a thing.

26 Now, my only concern is
27 -- from your standpoint -- is our trying to anticipate
28 what might be necessary for you in the way of premises
29 to deal with these two questions.

30 I think the first question

1 is important only in the sense that I don't want you to
2 feel at the end of the day that you don't have enough to
3 make whatever conditions or recommendations you would
4 otherwise want to make, that you don't have enough in the
5 way of evidence.

6 THE COMMISSIONER: I
7 wouldn't make them unless I have the evidence.

8 MR. CUMMING: I mean, I
9 wouldn't want you saying that there has been no anthro-
10 pological evidence adduced, there has only been people
11 who can speak the current situation and therefore I
12 don't think there is enough to assess the factual claim
13 and support it in law, and therefore I can't make any
14 conditions which would be based upon that finding. It
15 may be you want to make (and this is completely hypothe-
16 tical), that you may want to make a recommendation on
17 the assumption that there is a proprietary interest that
18 is being affected and therefore you want to recommend to
19 the government that it alter the route, say hypothetically,
20 or that from a standpoint of fairness, the question of
21 that compensation should be resolved before a permit is
22 issued which I think is possibly the extent of your
23 power, but I want to get into the position of being con-
24 fident you have the premises to deal with both questions,
25 howsoever you may deal with them.

26 On the first question, I
27 emphasize I don't think it is prejudicing Gas Arctic and
28 I think in the interest of expediting matters, not to
29 require strict proof and not to require extended legal
30 arguments on the question of title, and to admit that you

1 have the premises so you can assume as a factual and
2 legal claim and thereupon how far you may decide, if at
3 all, and make any recommendations you might want to
4 make.

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5 MR. GOLDIE: Mr. Commis-
6 sioner, it seems to me the evidence of existing land
7 use is going to be treated by at least Arctic Gas as be-
8 ing unaffected by whether it is done as a matter of
9 right or by virtue of some grant from some sovereign
10 power, so that the first group, the first grouping, I
11 don't think, is going to be affected by the question Mr.
12 Cumming raised.

13 It seems to me that you can
14 proceed upon an assumption. Now the agreement as to
15 that assumption and the resulting removal of evidence in
16 support of that is something we could very easily discuss
17 and I am quite prepared to do that with Mr. Cumming, or
18 anybody else.

19 I simply make the observa-
20 tion now that for the purpose of the argument that my
21 friend wishes to make, I do not presently see the
22 necessity of him establishing a premises which you could
23 accept as an assumption.

24 I am sorry, perhaps I am
25 not making myself too clear. I think my friend said
26 Arctic Gas would agree that the native people have
27 original title. I think, with respect, that goes beyond
28 what we should be asked to agree to. There are so many
29 other people who have an interest in this, we are a very
30 small potato but I think for the purpose of recommendations

1 with respect to the terms and conditions with respect
2 to the right-of-way, there is room for an assumption to
3 be agreed upon and that is something I would be quite
4 happy to speak to.

5 THE COMMISSIONER: Before
6 we adjourn for coffee, just let me say that I don't
7 have their statement before me, but the Prime Minister
8 has made a statement on aboriginal rights, and the Minis-
9 ter of Indian Affairs and Northern Affairs made a fairly
10 comprehensive statement, in any case, a willingness of
11 the Federal Government to negotiate a settlement of the
12 land claims of the native people here in the north.
13 In light of that, it is not for me to say whether the
14 claims are valid or not. Their nature and extent and
15 the ultimate settlement is a matter between the native
16 people and the Government of Canada, but in the meantime,
17 having regard to the argument the native people wish to
18 put forward in this enquiry, they are bound, it seems
19 to me, to indicate the extent of their current use of the
20 land and water, that part of the area being examined by
21 the enquiry, and in addition to indicate the extent, the
22 nature and extent of their claim in a general way because
23 it may well be -- I don't really know -- it may well be
24 that their claims extend beyond current use. I put it
25 that way because there may be traditional uses they will
26 rely upon that are not being observed today.

27 I only asked you to consider
28 that because it had been troubling me.

29 MR. CUMMING: Perhaps I
30 should say this further on that, I think you are correct

1 on that last point, that our map will show, the prelimin-
2 ary map will show at the least current use and traditional
3 use and changes.

4 On your point about what
5 the government position is, quite commendably they are
6 prepared to negotiate and they are funding those negotia-
7 tions, and I agree I see the settlement process external
8 to these hearings, and I would hope that the settlement
9 takes place quickly.

10 One can't anticipate that,
11 but it is certainly possible. We anticipate being
12 ready and negotiating well before the point in time --
13 your report -- to allow a settlement before your report
14 is completed, but my problem in this, in part, in saying
15 he will negotiate the Minister's statement of August 8th,
16 1973, Mr. Chretien's statement which I think is the formal
17 statement of the government on it, was careful to say
18 that negotiations was negotiation without formal recogni-
19 tion of right. I think that is sufficiently understandable.

20 I think it is fair to say
21 that a great many native people feel the land claim issue
22 is the most pressing issue, will want to speak to it to
23 this enquiry, and will be asking you to deal with it and
24 I think it is only fair to say that whatever you may or
25 may not say in respect of that first question, will have
26 some flavor with the government and the public.

27 I am not suggesting how you
28 should handle it, Mr. Commissioner, I am saying what
29 the expectations are and I don't think there is anything
30 improper in those expectations at all. Supposing you

1 were to assume that a proprietary right is being affected,
2 and that you were to feel in your sense of fairness,
3 without saying it should be compensated for such, that
4 in your sense of fairness it should be dealt with before
5 something happens.

6 I myself don't think that
7 would be improper. In any event, I think that expectation
8 will be there and notwithstanding what firm position
9 might be taken at this point, I think the expectation will
10 continue. I think that is a real situation that is there.
11 I think that some sort of an agreement particularly be-
12 tween Commission counsel who have been actively involved
13 with all the native groups, I think that some agreement
14 that all these expectations on the first question will
15 be appropriate.

16 THE COMMISSIONER: Well,
17 let us adjourn for coffee.

18 (PROCEEDINGS ADJOURNED AT 11:10 A.M.)

19 (PROCEEDINGS RESUMED AT 11:30 A.M.)

20 THE COMMISSIONER: There
21 is one other written submission that has just arrived,
22 and I will ask Mr. Waddell to read it.

23 MR. WADDELL: This is from
24 the Northwest Territories Chamber of Commerce, and it is
25 a letter signed by Murray Sigler:

26 "Dear Sir:

27 Unfortunately, our organization will be
28 unable to have personal representation at the
29 hearings in Yellowknife on September 12, 1974,
30 as our semi-annual meeting at Hay River is

1 scheduled for the same date.

2 In connection with the scheduling of the
3 hearings, however, we would submit as follows
4 on behalf of the business community in the north:

5 1. The hearings should proceed as soon as possible.
6 Whether or not the pipeline is ever built, there is
7 growing uncertainty in the business community, the
8 more the decision-making process itself is prolonged.
9 At the moment, for example, small contractors are
10 up in the air, so to speak, with their planning
11 for the next 5-10 year period. Once a decision
12 is made, one way or the other, stability in plann-
13 ing could once again be restored. While some delay
14 is not only inevitable, but desirable, in order to
15 assure all groups fair representation at the hearings,
16 inordinate delays will be clearly prejudicial to
17 the entire business community in the Mackenzie
18 District, and hence to our overall economy.

19 2. Hearings should be held in all Mackenzie Dis-
20 trict communities of substantial size. In addition
21 to a general brief to be presented in Yellowknife
22 by the N.W.T. Chamber of Commerce, member Chambers
23 in Inuvik, Fort Simpson, Hay River, Fort Smith,
24 and Yellowknife will wish to make individual
25 submissions covering the special concerns of
26 their local business communities. (See my letter
27 of August 23, 1974 to your Mr. Waddell).

28 I hope the above approach will be followed
29 by the enquiry, in the best interests of all
30 northerners."

1 Now there is also a submis-
2 sion from N. Allan Maydoik, the vice-president of the
3 Hay River Chamber of Commerce. It is actually a submis-
4 sion on the merits, the affect of the proposed pipeline
5 on Hay river, and I would ask it be treated similar to
6 the Old Crow matter.

7 THE COMMISSIONER: The letter
8 from Mr. Sigler will be marked as an exhibit. The letter
9 from the Chamber will be filed and read at the main hearing
10 or perhaps the community hearing at Hay River, and we will
11 so advise the people that sent it.

12 Mr. Sutton, do you wish to
13 say anything?

14 MR. GOLDIE: I wonder,
15 Mr. Commissioner, if you want to consider this. I have
16 some very short observations in reply to some comments
17 made yesterday. Does Mr. Scott prefer to hear what I
18 have to say, holding the position traditionally occupied
19 by the Attorney-General?

20 MR. SCOTT: Mr. Commissioner
21 I think I am going to hear what Mr. Goldie has to say,
22 anyway.

23 MR. GOLDIE: Well, I want
24 to, if I can, sprinkle a little water on some of the brush
25 fires that were started yesterday. If it blows up in
26 my face, I will know the label on the can was the wrong
27 one.

28 I think, with respect, Mr.
29 Commissioner, that the substantial problem ahead of us
30 is one of time. With great respect, I think the procedure

1 I have suggested on the question of documents is a work-
2 able and practical proposition, and I hope that we can
3 proceed with that progressing and progressive, if I may
4 say so, suggestion.

5 I think that -- and I want
6 to be very clear about this -- I may have sounded critical
7 of Mr. Scott yesterday, and I did not mean to be because
8 he was endeavoring to reconcile varying points of view
9 and if I used -- the suggestion was made the point of
10 departure, it was not that I had been suggesting he was
11 not endeavoring to discharge his duty as Commission
12 counsel, and that is to say moving the enquiry ahead in
13 a way that would be fair to all.

14 It really should be unneces-
15 sary for me to say not only should there be a full and
16 fair examination but that is what we want, because we feel
17 quite strongly, can only review anything, the dimensions
18 of the research and the attempts that have been made to
19 meet the problem.

20 So far as I am aware, there
21 never has been a proposed enterprise, public or private,
22 that has been preceded by so much investigation, and I
23 say that with respect to anything that I am aware of in
24 the world. It is ironic to hear that turned against
25 Arctic Gas. It is ironic to hear the proposition, "Well,
26 it took three years to get ready, it took six years to
27 get ready, we should have a year to look at it."

28 As I endeavored to explain
29 in Ottawa, the time that has been taken is to provide a
30 mass of material which would allow an evaluation to be

1 made without the necessity of bringing together baseline
2 data or developing baseline data. Not only has this
3 project been preceded by a mass of information and a mass
4 of investigation, but the material has been made available
5 in detail in advance of anything that I have ever been
6 aware of. I want to avoid being repetitious on this, but
7 I am going to address myself to this question of time,
8 which I think is a vital question.

9 I think it must be conceded
10 that the information that has been available to interested
11 people did not start in March. It was available and de-
12 veloped far before that, but certainly in March, since
13 March of this year there has been a revelation, if I may
14 put it that way, of the applicant's case certainly unpara-
15 lled in any regulatory or Court proceedings that I am
16 aware of.

17 We are asked now to abide
18 by the timetable of a group called the Northern Assessment
19 Group. I think if you analyze the submissions that were
20 made yesterday, it all comes down to the convenience of
21 that group. I am not suggesting that that group is unnec-
22 essary. In fact, it is apparent from the comments of that
23 group that you, Mr. Commissioner, believe that they can
24 make a significant contribution. What I am saying is
25 that the conduct of this enquiry should not await the con-
26 venience of that group; and if it was embarking upon a
27 field that had never been explored -- now I said in Ottawa
28 that most of the concerns expressed were in anticipation
29 of prejudice, and were not examples of actual prejudice.
30 I say the same thing here. There is yet to be a suggestion

1 that any specific document has been denied anybody, or
2 any specific report has been denied anybody. We have
3 heard generalizations, but nothing specific.

4 Now just to illustrate, if
5 I may, the proposition that we must not assume that people
6 are embarking upon an enquiry that has never been conducted
7 before, I want to refer to the Clark Statement of Objections
8 of January, 1974, and I do so not for the purpose of sug-
9 gesting it contains an admission which I am going to hold
10 somebody to, that is not the point at all. But it is for
11 the purpose of illustrating my point that there is a
12 tremendous amount of work already done and there is a
13 tremendous amount of material already available, and that
14 is what we should be working on.

15 Now the statement of objec-
16 tions contains this paragraph:

17 "The environmental studies conducted by government
18 and industry for the proposed natural gas pipeline
19"

20 and that is this one right here,

21 "...indicates that if competent procedures are
22 now followed, and stringent regulations, contract
23 specifications and monitoring systems are instal-
24 led, such a pipeline might be shown to be capable
25 of construction and operation within acceptable
26 environmental impact."

27 Now that is obviously based
28 upon an evaluation of material. These are responsible
29 people. I note one of them is my friend, Mr. Cumming.
30 Another one is my friend, Mr. Lucas. Another is Dr. John

1 Spence who is heading the Northern Assessment Group
2 program, and there are some others.

3 Now obviously -- and I say
4 this in no spirit of criticism -- obviously Dr. Spence
5 had in hand in that judgment I have referred to, just
6 as obviously when he was asked to head up the Northern
7 Assessment Group and was informed that there was a large
8 sum of money available, he said, "Let us do something
9 bigger," (and therefore better). But he is going to be
10 retracing ground that he has already gone over and to say
11 that this enquiry cannot start until that group reaches
12 a decision on their new enquiry, and my friend was very
13 candid, they may reach exactly the same conclusion they
14 already had reached. That, with great respect, Mr.
15 Chairman, is not the kind of reasoning you, acting
16 judicially, should accept, and I don't, and I want to
17 emphasize this. If I could see a specific example of
18 prejudice, I would be very much concerned to meet that.

19 Let us take the situation of
20 evidence being led in chief by an expert. What we propose
21 is to ensure that people have in hand the material that
22 will enable them to cross-examine that expert, but if
23 for any reason counsel for some party can tell you that
24 he is unable to cross-examine, then that man will be stood
25 down, subject to recall, that is what people who are in
26 control of trials and enquiries do all the time, and we
27 go on with the next witness. That is the way in which
28 specific prejudice is guarded against.

29 Now I really don't want to
30 say very much more except to clear up the question which

1 might have been misunderstood yesterday. My suggestion
2 was that we should prepare this documentary material and
3 furnish it, and that suggestion became attached to the
4 idea lists of documents or lists of witnesses and a
5 synopsis of their evidence should be furnished at least
6 two weeks ahead of each phase. I want to make it clear
7 that while I submitted and I submit very strongly a re-
8 quirement that we produce a single list today, or starting
9 today, would be prejudice and delay for the reasons I
10 gave yesterday. Nonetheless, we are not going to with-
11 hold lists of documents until two weeks before it is tabled.
12 We will do what I suggested be done, just as rapidly as we
13 can. The point I was making is that I can assure you
14 that if the first phase evidence commenced on November
15 18th, that we would be able to give a list of the documents
16 as I -- of the kind I described yesterday, probably at
17 least 30 days before that date.

18 THE COMMISSIONER: Now the
19 list would encompass what? Would you mind repeating that?

20 MR. GOLDIE: The suggestion
21 I made yesterday and I think I had better look to my notes
22 so that I am not suggesting something else today, it would
23 be a list of documents relating to each witness and would
24 contain all those documents or references referred to
25 or to be used by that witness, or which that witness in
26 his view believes may touch upon the subject matter of
27 his evidence.

28 Now I put it that way because
29 I wanted to avoid this question of privilege, and I won't
30 repeat the submission I made yesterday, that presents a

1 legalistic and very thorny problem. Now my friend said,
2 "All right, just forget about privilege and let us forge
3 on." But I have other responsibilities.

4 Now lists of that character
5 which in my submission is the kind of list which will
6 enable advisors to relate it to the witnesses and to the
7 subject matter that they are talking about, instead of
8 a single list simply of documents without differentiating
9 as to subject matter or anything else, except by description
10 or identifying the area of evidence of the witness. Those
11 kind of lists we would endeavor to turn out as rapidly as
12 we could but we do not want to have our work preparation
13 stopped so we have to perform this duty of providing or
14 conducting this very onerous task of examining each and
15 every document. I don't want to repeat the submission I
16 made yesterday, and I didn't intend to get into that.
17 I simply say, if indeed we are interested in getting ahead,
18 if indeed we are interested in this being a full and fair
19 enquiry, then I suggest we do it on a progression basis.
20 I suggest we can start on November 18th, and let us see
21 if anybody can demonstrate any actual prejudice. I cer-
22 tainly won't be hard to get along with because I have been
23 in that position myself, and I know what it is to have to
24 examine an expert witness without adequate preparation, and
25 I am endeavoring to overcome that and if it can be shown
26 that there is an area, certainly we will stand him down
27 and let us get on with the next one. I don't want to have
28 it suggested, because I haven't referred to it, that by that
29 I am substituting for that a right of recall even if cross-
30 examination has been completed, if it becomes clear that

1 the evidence of a man on phase 1, if you like, becomes
2 again relevant down the track. Now that, Mr. Chairman,
3 constitutes my attempt to be helpful this morning.

4 I did want to urge upon
5 you the desirability that these important proceedings should
6 not be governed by the convenience of the group that has
7 come into being as a result of the funding which you have
8 provided.

9 MR. LUCAS: Mr. Commissioner
10 I wonder if it might be appropriate for C.A.R.P. to say
11 a few comments in view of this group being singled out
12 for comment?

13 MR. GOLDIE: For praise.

14 THE COMMISSIONER: Yes,
15 certainly, and we will leave the Attorney-General in the
16 wings.

17 MR. LUCAS: First of all,
18 Mr. Commissioner, Mr. Goldie suggested that the requirements
19 as to time that were presented yesterday are based upon the
20 convenience of a very group that has come into existence
21 at the last moment, so to speak.

22 THE COMMISSIONER: And unknown
23 to anyone in Inuvik. I don't think you have to reply
24 to that sort of thing.

25 MR. LUCAS: I think it is
26 important to explain, to re-emphasize the reason for this
27 group, and the reason for the kind of investigation it
28 has undertaken, and again explain exactly what kind of
29 investigation it is undertaking.

30 Mr. Goldie has suggested

1 that the review that the Northern Assessment Group will be
2 doing is in a field that he suggests is not exactly a
3 field that has never before been explored. Of course,
4 that is perfectly true. However, the work that the
5 Assessment Group will be doing, it must be emphasized, is
6 not independent original research, rather it is independent
7 review of the data produced by Canadian Arctic Gas in
8 support of its application, and in addition it is a review
9 of any other relevant information that bears on the issue
10 raised by the Arctic Gas material; and I think it is
11 important to emphasize that, that the work of the Assess-
12 ment Group goes well beyond, and it is intended to go well
13 beyond the material introduced by Canadian Arctic Gas,
14 and it is also important to emphasize that this is an
15 independent investigation and the important thing is not
16 to emphasize the area of the investigation but rather
17 to emphasize the interest that is being represented by
18 and through the investigation to be carried out by the
19 Northern Assessment Group. This is an independent review
20 of the material produced by Arctic Gas and other relevant
21 material, and it is an independent review of a kind that
22 is absolutely unique in terms of enquiries of this kind,
23 and I think it is important to emphasize that, particularly
24 in view of the fact that we are all agreed that the pur-
25 pose of the enquiry is to serve the public interest in
26 the broadest and most effective way.

27 With respect to the quotation
28 that Mr. Goldie offered from the Canadian Arctic Resources
29 Committee News Letter:

30 "Northern Prospective " --

1 MR. GOLDIE: Don't disavow
2 that now.

3 MR. LUCAS: I don't propose
4 to deny it. Of course, we will produce it, as a matter
5 of fact I think it is perhaps significant that it has al-
6 ready found its way into the files of Mr. Goldie.

7 The statement was made in
8 January, 1974, and it is in the context of a general state-
9 ment of the objectives of the Committee, and it should be
10 read in that way and it should be emphasized the language
11 used is:

12 "The proposal of Canadian Arctic Gas might be
13 shown to be environmentally acceptable provided
14 that the evidence produced by Canadian Arctic
15 Gas is thoroughly tested."

16 And that really is the point that is sought to be made in
17 that statement, and it goes to the objectives of the
18 Canadian Arctic Resources Committee and our rather diffi-
19 cult, at times, attempts to explain that we are not an
20 environmental group standing up opposing the pipeline,
21 rather we are a group with the stated objective of ensur-
22 ing that the proposal produced by Canadian Arctic Gas
23 is thoroughly tested and that the public interest is
24 served to the extent that the evidence is thoroughly tested
25 and reviewed in a public forum such as this enquiry, and
26 I might also add that that statement was, of course, made
27 prior to the filing of the application by Canadian Arctic
28 Gas and should be looked at in that time frame; and finally
29 I must emphasize the Canadian Arctic Resources Committee
30 is a public interest group and anybody who knows anything

1 about public interest groups realizes that public interest
2 groups are re-active and Mr. Cumming made this point in
3 his submission yesterday with respect to the native
4 groups, were always the last to know.

5 We read the papers like anyone
6 else, and of course we were aware some years ago that there
7 was a possibility that a proposal for a Mackenzie Valley
8 Gas Pipeline would be brought forward, but it is absurd
9 to suggest at that time we should have engaged scientific
10 investigators to begin technical review of what the North-
11 ern Assessment Group that was set up when all the infor-
12 mation was on the table, and I said, "All of the infor-
13 mation" , when the application was on the table and indeed
14 there is a great deal of information that I think it is
15 apparent to everyone, remains yet to be disclosed. That's
16 all I have to say.

17 THE COMMISSIONER: I was
18 going to ask you, Mr. Goldie, about another matter and I
19 will do so, so you can say anything if you wish, before
20 Mr. Scott goes ahead.

21 There is, in some of these
22 telegrams and letters which Mr. Waddell has read, one
23 might infer that the people who sent them are under the
24 impression if I were to complete my enquiry, make approp-
25 riate recommendation, and if the Government of Canada were
26 to then grant a right-of-way, that there would be people
27 out digging a trench in the Mackenzie Valley the next day.

28 The whole regulatory proced-
29 ure is a complicated one. I have to hold an enquiry. I
30 have to make recommendations to the Minister, and he and

1 his colleagues have to decide to accept them or not, what-
2 ever they may be. Only then would a right-of-way be
3 granted. You have to go to the National Energy Board
4 to obtain a certificate of public convenience and necessity.
5 This is an international pipeline, you have to obtain a
6 right-of-way from the Secretary of the Interior from the
7 United States, and your pipeline has to be approved by
8 the Federal Power Commission of the United States.

9 MR. GOLDIE: That portion
10 in the United States and Alaska.

11 THE COMMISSIONER: Yes.

12 Now the National Energy
13 Board is presently holding hearings relating to its
14 policy on the export of gas. They haven't been set,
15 although Mr. Gibbs is ready to go, and no doubt you are,
16 too.

17 MR. GOLDIE: Yes, maybe he's
18 going to do the same thing there, ride on our back.

19 THE COMMISSIONER: No, he
20 says his "Readers Digest" material is ready. Anyway, the
21 National Energy Board presumably would hold those hearings
22 before they turn to a consideration of your application,
23 or of the Alberta Gas Trunk Line application, and Alberta
24 Gas Trunk apparently does not intend to file until next
25 June. The Energy Board might not be ready to consider the
26 applications anyway until then, and in any event, Arctic
27 Gas has not completed its filing with the National Energy
28 Board, so that the Energy Board, it would appear, is not
29 likely to get under way for some time to come. I am
30 simply going on the basis of what has been said before this

1 enquiry, and what I read in the newspapers.

2 In the United States, the
3 information that we have -- and it is public knowledge --
4 is that under the National Environmental Protection Act
5 a study group has been established jointly by the Secre-
6 tary of the Interior and the Federal Power Commission,
7 which consists of 90 scientists and has a budget of 4½
8 million dollars, and they are apparently preparing environ-
9 mental impact statements under the U.S. Legislation of
10 1969, and they are considering, apparently, the proposed
11 Arctic Gas Mackenzie Valley line, and they are considering
12 the El Paso proposal, and they are considering as well the
13 possibility of gas coming from the Arctic Islands.

14 I should say that one of
15 the reasons I went to Washington was to arrange an exchange
16 of information between the enquiry staff and that joint
17 study group established in Washington where the Washington
18 group is looking at things, such as perma frost, in the
19 Alaska section of your proposed line, an exchange of
20 information with the enquiry staff and the assessment
21 group, and through the enquiry staff and the assessment
22 group everybody else participating in this enquiry should
23 be arranged; but that study group seems to me to be anala-
24 gous to Dr. Fyle's study group. That study group isn't
25 going to be submitting even its draft statement until some
26 time next year, and after that, apparently (and I don't
27 pretend to be an authority on this), after that you have
28 to go before the Federal Power Commission; it would hold
29 hearings before an administrative judge, and then you
30 would have to hold hearings before the full Commission.

1 There are a lot of hurdles to get over.

2 MR. GOLDIE: Yes, and you
3 haven't named them all.

4 THE COMMISSIONER: I have
5 named all the ones that I know of, the ones at least that
6 are found embedded in the legislative provisions, and I
7 know that you are ready to proceed. I know Arctic Gas is
8 anxious to get on with the surmounting of all these hurdles
9 as quickly as they can; but it seems to me the impression
10 should not be left that this enquiry is going to settle
11 these questions. These regulatory agencies have not even
12 attempted to consider when formal hearings of any kind
13 might be held. I am not asking you to comment extensive-
14 ly about that, but that is about the situation, isn't it?
15 I fully understand your client wants to get on with the
16 job.

17 MR. GOLDIE: Well, I think
18 it might be helpful if I could comment.

19 THE COMMISSIONER: Go ahead
20 then.

13 SEPT. 1974

21 MR. GOLDIE: Firstly, the
22 N.E.B. surplus hearings that are going to be held this
23 fall will involve a consideration of Canadian market
24 requirements, anticipated sources of supply, and the pre-
25 sent means of determining whether there is a surplus for
26 export purposes. The indications are -- and I say
27 "indications" -- from the material that has already been
28 filed with the Board for those hearings that I think will
29 take place in October, the indications are that the Canadian
30 market requirements will probably show a need for Delta

1 gas much sooner than even Arctic Gas was proposing some
2 time ago.

3 THE COMMISSIONER: Excuse
4 me, you are suggesting what the outcome of the N.E.B.
5 hearing might be, is that it?

6 MR. GOLDIE: No, I am say-
7 ing that the material already filed suggests a need for
8 Delta gas and certainly Trans-Canada Pipeline has stated
9 that they will accept no increase in nomination from
10 utility customers until they are assured a new supply of
11 gas. If my friend, Mr. Gibbs, were here, he quotes his
12 principle in even more express terms. The importance of
13 that Arctic Gas really affects the design of the lower
14 portion of the system. Delta gas all going east in
15 Canada, that affects the design of the line south of the
16 bifercation line.

17 Phase 2 of the filing of
18 Arctic Gas will be made towards the end of this month,
19 or sometime towards the end of October. They will re-
20 flect the fact that changes may have to be made in the
21 design and they will reflect the fact there is probably,
22 with some other inponderables which may dictate some alter-
23 ations, but that is a very common feature in a pipeline
24 application.

25 I would anticipate that the
26 surplus hearing would be completed by the end of the year,
27 and that the Arctic Gas hearing will be scheduled for
28 sometime in the late spring.

29 Of course, I would also
30 anticipate that there will be an order consolidating the

1 Foothills application, and that they would either file
2 or be in intervention, and their filing would come along
3 in due course.

4 I don't think I have ever
5 suggested that this proceeding is on the critical path
6 with respect to the regulatory approval. I think I said,
7 and I may have been misunderstood in Ottawa on this, with
8 respect, Mr. Commissioner, your ruling suggests I didn't
9 make myself too clear. I said that this was the first
10 of the regulatory proceedings in Canada. It was being
11 watched with a considerable degree of interest. I did
12 not ask that this proceeding be expedited, but I did say
13 unreasonable delay would adversely affect Arctic Gas by
14 reason of giving El Paso some substance to the argument
15 that it is currently making, that the regulatory proceed-
16 ings in Canada will in fact take far longer than in the
17 United States.

18 The proceedings in the
19 United States are much as you have described them. I
20 know of no requirement that the Federal Power Commission
21 await the environmental impact statement before commencing
22 its proceedings. With respect, you correctly used the
23 word "draft" statement because the provision of that law
24 is that the draft statement is circulated for comment in
25 a very formal way, and those comments become part of the
26 final statement.

27 As I say, I know of no re-
28 quirement that the F.P.C. await the full development of
29 that procedure before scheduling its hearing, and as you
30 are probably aware, there are some procedures which allow

1 time to be shortened.

2 The point I am making, I
3 think I have two points: Firstly, there are some obvious
4 problems that all these hearings come together. Now you
5 might say, "That is no concern of mine." With respect, I
6 suggest it does have a bearing because it will inevitably
7 affect the scheduling if we have to have a witness who is
8 the only man who has the knowledge in that field in three
9 different places at once.

10 THE COMMISSIONER: As a
11 matter of fact, it is a concern of mine. I am glad you
12 got to it, because if the Energy Board schedules a hearing
13 even on the export of gas, this fall, and of course they
14 haven't even set a date or a time, for this enquiry may
15 be involved; or is that not likely?

16 MR. GOLDIE: The witnesses
17 that will be involved in the hearing this fall wouldn't
18 even, in my most wildly optimistic moment, be coming on
19 before this hearing until next year. There is no engin-
20 eering or technical evidence involved in the technical
21 sense of engineering; there will be reservoir, deliver-
22 ability, the market. These are not part of any aspect of
23 phase 1. They might -- and this you no doubt may regard
24 as an advantage -- remove me; but others will be available

25 THE COMMISSIONER: No,
26 that would be a disadvantage not only to the enquiry but
27 perhaps to your client. But that certainly is not my
28 problem.

29 MR. GOLDIE: I am saying
30 that I see no problem with respect to the surplus hearings

this year, so far as having any adverse impact on the presentation of evidence before you.

You, with respect, Mr.

Commissioner, correctly saw that it was necessary for us to know the terms and conditions that you recommend, and which indeed the Government of Canada may or may not accept, before we complete our submission to the National Energy Board. You outlined that in your ruling, so that if there is any order of priority, I say with respect yours comes first and that has been the basis upon which I have urged that we commence our substance work here. I don't believe that I have ever suggested that this procedure here or the result of your report here will result in construction occurring the next day, but it is a very important step towards it.

THE COMMISSIONER: There is one other matter I wanted to ask you about. Let us suppose that I were to reject Mr. Scott's proposal about producing lists and the production of documents. You say that proposal of Mr. Scott's is unnecessary, and that these proceedings, this enquiry can be done informally by agreement as it was in the B.C. Hydro case. Even if I were to accept your view, the enquiry is still confronted with the problem of its power to issue subpoenas or to summons persons and require them to produce documents. The words used in the Territorial Land Act and in the order-in-council, and there are two categories of third parties to which it may be necessary to issue such a summons, and the argument might then be heard on the question whether those documents should be produced.

1 The first category is the
2 departments of the Government of Canada. The second cate-
3 gory consists of oil companies who are engaged in oil and
4 gas exploration activity in the Mackenzie delta, and it
5 concerns me, having raised the question of this enquiry's
6 power, it is one which it seems to me I have to at least
7 consider and determine myself, even if I were to accept
8 your view on the discovery.

9 Everybody else, except
10 Arctic Gas, all of the other major participants had sub-
11 mitted to Mr. Scott's proposal. Mr. Gibbs submitted to
12 it, and you have given your reasons for not submitting to
13 it, and I certainly intend to consider them. But even if
14 I accept your view, we still may have to struggle with this
15 question of the enquiry's power later on.

16 I only raised that for you,
17 Mr. Scott, to say anything further about it that you wish.

18 MR. GOLDIE: Could I do so?

19 THE COMMISSIONER: Yes.

20 MR. GOLDIE: First you
21 mentioned the Government of Canada, and of course no one
22 has appeared for the Government of Canada, and we have no
23 assurance that it will do the things we expect and hope
24 it will do.

25 THE COMMISSIONER: May I
26 say the enquiry has received the fullest co-operation of
27 the Government of Canada so far and expect it will continue.

28 MR. GOLDIE: I was going
29 to express -- I think we should assume, with respect, it
30 will co-operate, and that indeed there can be no problem

1 of the kind you have referred to.

2 With respect to the oil
3 companies, when I read your preliminary ruling in which
4 you said that this became the subject matter of concern
5 here, that immediately concerned me because if I couldn't
6 in one way or another see to it you were satisfied with
7 the scope of the evidence and obviously I am going first,
8 my client is going to be the first invited, and I have
9 discussed this with counsel for one of the oil companies
10 and I understand that he has discussed it with counsel for
11 others, and I don't wish to suggest to you, Mr. Commissioner,
12 that I am speaking on behalf of the company, the producers,
13 but my understanding is that they intend to ensure that
14 you receive the kind of evidence that you talked about and
15 I, therefore, was satisfied with that assurance which was
16 told me, that that was an evidentiary area that I didn't
17 have to worry about.

18 I don't want to suggest to
19 you that you never will have to use your subpoena power,
20 but as I said yesterday, I certainly am not able to assist
21 you by making a submission with respect to whether you do.
22 Even if you don't -- however, I can say this, if, as a
23 matter of statutory construction or for any other reason
24 you do not possess the complete power of subpoena, as my
25 friend, Mr. Cumming pointed out yesterday, you certainly
26 have a power of summons. The question is whether you
27 have the power of enforcement, is the way he put it. The
28 power of enforcement is obviously there, because you are
29 a constituted Board of Enquiry, and you can make an appli-
30 cation to a judge for a subpoena, and that completes the

1 circuit. That is one way of dealing with it.

2 Another way can very well be
3 to see if you can be granted that power if indeed there is
4 a lack, and I emphasize that I haven't made up my mind on
5 that point. I would be happy to give consideration to
6 that.

7 I think I would say this,
8 that I see no immediate problem with respect to this, and
9 I think certainly Arctic Gas isn't going to be required to
10 be subpoenaed. If I had anything to say, we are sort of
11 standing at the doorstep, and therefore if we are a lead
12 item, as it were, we push that question of subpoena down
13 the road until, perhaps, counsel have had an opportunity of
14 considering it and giving you the benefit of their consid-
15 eration if that is what you so desire.

16 I just said yesterday that
17 the problems inherent in the scheme as I understood it, as
18 first presented, was such that I would have to get instruc-
19 tions from my client on this if an order was purportedly
20 made.

21 THE COMMISSIONER: If the
22 rule was made.

23 MR. GOLDIE: If the rule
24 was made and we are then confronted with some great problem
25 that imposes an overwhelming delay or imposes an overwhelming
26 task of the type that we had objected to.

27 I want to emphasize that it
28 is our desire to do all that we can, as soon as we can, and
29 as completely as we can, and that is the context in which
30 I made my submission.

1 MR. SCOTT: Mr. Commissioner,

2 I would like to touch on a number of matters that have
3 been raised since I launched the frail barque of my pro-
4 posed guide-lines yesterday before it was set upon by the
5 pirates, who are my colleagues across the hall.

6 I think they have survived
7 in part, and I would like to touch on only one or two
8 matters. First of all, timing. I have made a recommenda-
9 tion with respect to timing. I feel guilty, as one of
10 the correspondents noted, for making no recommendation
11 with respect to completion date. I have been here two
12 days and I'm almost prepared to make such a recommendation.
13 I think earlier rather than later, but I think in the
14 circumstances it would not be appropriate to do so now.

15 You have heard elaborate
16 submissions about the timing, and I really have nothing more
17 to say on that subject except to vigorously assert on
18 the selection of time that consideration should be given
19 to adequate preparation, on the one hand, and no inordin-
20 ate delay on the other, and in the context I am suggesting
21 the Commission will find a satisfactory starting date.

22 Let me turn to what I think
23 is perhaps the outstanding question that remains between us
24 on the proposed rules or guide-lines, and that is the
25 production of documents.

26 Now, my friend, Mr. Goldie,
27 raises two matters with respect to production that I
28 respectfully submit are irrelevant to the matters that
29 you have to consider at phase 3.

30 First is the question of the

1 existence or the extent of the privilege with respect to
2 documents, and the second is the question of whether the
3 Commission possesses a subpoena power. First of all
4 let me say something about privilege. What the proposed
5 rules require, of course, is a list of documents and it
6 is specifically contemplated to be no more than that --
7 a list. The rule contemplates that any question of
8 privilege, if such there be, can be resolved not upon the
9 production of the list, but upon the request for the pro-
10 duction of the individual document, so that the question of
11 the existence of privilege and its extent is really de-
12 ferred beyond the list to the production request; and that
13 is not only the intention of the rule, in my respectful
14 submission that is a desirable thing because then you will
15 be able, as Commissioner, to approach the issue not in the
16 abstract but with regard to the particular document that
17 is sought to be reviewed or produced, and for which produc-
18 tion is refused. Having heard Mr. Goldie, I am satisfied
19 that in view of his client's attitude, no such issue or
20 few such issues are ever likely to arrive.

21 In any event, it is desir-
22 able that the question of privilege be considered with
23 regard to a particular document and the rule assures my
24 friend, as I suggested it should, it assures my friend
25 of the right to assert a privilege at the appropriate time
26 when the production is requested. That is adequate and
27 full protection of his client's rights, whatever they may
28 be.

29 The next matter that he
30 referred to is the subpoena powers, and Mr. Goldie argued

1 it, and he frankly says that he has not reached a conclu-
2 sion about its validity. His argument essentially is
3 because the word "subpoena" is found in another Statute,
4 the Enquiries Act which has no application to this Statute,
5 and is not found in this Statute, that it therefore follows
6 that you have no comparable power to summon the attendance
7 of witnesses or the production of their documents. Now
8 in my respectful submission there is no merit in that view.

9 If this were an enquiry under
10 the Enquiries Act and you had a specific subpoena power,
11 as that Act indicates, you would be able to do nothing but
12 subpoena; the question of enforcement would remain a ques-
13 tion to be passed upon by a Superior Court upon application
14 to it. So that whether it is under the Enquiries Act,
15 for a specific subpoena power, or an enquiry under the
16 Territorial Land Act, with a summons power, the question
17 of enforcement is beyond both of those tribunals and it is
18 to be passed upon only by a Superior Court.

19 Now I can see that the word
20 "subpoena" isn't used in the Territorial Land Act, and
21 therefore is not used in the order-in-council, but can it
22 be said by that mere fact that there is given to you no
23 comparable power? I think if one looks at the wording
24 in the Act, carried forward into the order-in-council,
25 a different conclusion is arrived at.

26 Before we read this, let
27 us remember what Mr. Goldie says, or suggests. His essen-
28 tial suggestion, as I understand it, is that without the
29 use of the magic word "subpoena" you have no more than the
30 right to invite a person to appear before you and produce

1 documents. It seems to me there is no middle stage,
2 either you have the right to summons or subpoena them, or
3 you don't. If you don't, the limit of your right is to
4 invite them to appear. In that context I think it is
5 appropriate to look at the section of the Act and it
6 specifically says that you may, for the purposes of the
7 enquiry, summon and bring before him -- the Commissioner --
8 any person whose attendance he considers necessary to the
9 enquiry, examine such person under oath, compell the
10 production of documents, and do all things necessary to
11 provide a full and proper enquiry; and then it goes on
12 and permits you to develop procedures for all the purposes
13 of the enquiry as you may deem expedient.

14 In my respectful submission
15 those words are not words of invitation. They are words
16 of compulsion. You may summon and bring before you, you
17 may compell production of documents, and in my respectful
18 submission the mere absence of the word "subpoena" as it
19 is utilized in another Statute does not detract from the
20 normal force that is to be attached to those words.

21 I think you can put it more
22 graphic if you observe that while the word "subpoena"
23 is not used, the intent of the section is one of compulsion
24 as opposed to invitation. I would simply say that
25 whether it be a summons or a subpoena, in this case we
26 say if it looks like a duck, walks like a duck, and quacks
27 like a duck, we may reasonably assume by the inference
28 process it is a duck.

29 While we may not call it a
30 subpoena, it is clearly a summons that has the force of law

1 attached to it.

2 In any event, that is not
3 a n issue that is now to be considered because no subpoena
4 or summons has issued, and no person has purported to resist
5 one, and indeed we have been told that none of the persons
6 here proposes at the present stage to do so.

7 I would put it to the Commis-
8 sion most strongly to consider this argument now is to
9 engage in what is at the moment entirely an academic exer-
10 cise and that it, that issue, like the extent of the
11 privilege for which Mr. Goldie contends should be consid-
12 ered in a concrete situation and not before.

13 I therefore have no hesitat-
14 ion in saying that these two submissions about privilege
15 and subpoena very tentatively advanced by my friend and
16 by nobody else are really the make waves to encourage the
17 Commission to reject the proposal I have made and to adopt
18 a substantial variation of it that my friend has proposed.

19 I would hope that his proposal
20 as to production of documents and my proposal as to produc-
21 tion of documents would each be judged on their merits, and
22 one of them or a variation of one of them accepted without
23 regard to academic questions of this type, which can be
24 resolved in case they arise when they arise.

25 Let us come to the production
26 rule precisely. I'm going to spend a little time on this,
27 because I think there are two things in my proposed rules
28 that are more important. Let me begin by saying that the
29 purpose of any production rule in a Court or in a tribunal,
30 anywhere else, is really threefold.

1 First of all, to produce
2 documents on which a party proposes to rely, that is not
3 very troublesome because he proposes to rely upon them so
4 you are going to get them sooner or later. But that is
5 the first thing, and that may be the limit of the produc-
6 tion rules in the Supreme Court of British Columbia. If
7 it is, it is not the limit in any other jurisdiction in
8 Canada, with which I am familiar, by which I mean I am in
9 one jurisdiction.

10 The second test of a produc-
11 tion rule, at least in the jurisdiction from which I come,
12 and in the United Kingdom, is that documents should be
13 produced which are relevant upon which the party does not
14 propose to rely. The purpose of that is obvious. It
15 is so that there will be full disclosure, not merely of
16 documents that are going to come out anyway, because
17 you're going to rely on them, but documents that may be
18 against any interest and which may be useful or helpful to
19 the other parties or the Commission or the Court.

20 That is the second thing
21 any production rule must do.

22 The third thing it must do
23 is establish a formula so there will be the assurance to
24 the tribunal, of counsel in the case of Court, of a
25 party perhaps in a case of this kind of enquiry, that
26 all relevant documents are listed and that assurance,
27 in my respectful submission, is of paramount importance
28 here.

29 Now Mr. Goldie has said,
30 and I have no doubt it is true, I noted his words, that

1 no specific report has been requested of his client and
2 denied. I don't doubt that is true.

3 MR. GOLDIE: Has been
4 requested.

5 MR. SCOTT: All right, has
6 been requested, and I presume it would not be denied if
7 requested.

8 MR. GOLDIE: That's right.

9 MR. SCOTT: All right, he
10 says no specific report, and of course if you don't know
11 of the existence of a report, it is extremely difficult to
12 make a specific request for it. Indeed, impossible, and
13 that is, of course, why the third characteristic of the
14 production rule is so important, so that there will be
15 some assurance, not infallible but no doubt made in good
16 faith of counsel for the parties that a complete disclosure
17 has been made and from that disclosure specific requests
18 may develop.

19 Now those three objectives,
20 in my respectful submission, must be found in any meaning-
21 ful or useful production rule.

22 Are we going to have a
23 production rule here? The question is really beyond issue
24 at this stage. I'm not saying that no modification can be
25 introduced in the preliminary ruling, but if one turns to
26 the preliminary ruling under discovery at page 8, this
27 is said, and I think should be read:

28 "As I have said, I expect that at the hearing
29 Arctic Gas, the native organizations, and the
30 environmental organizations will be represented

1 throughout. All of them should be prepared to
2 call witnesses early on to discuss in a general
3 way the studies that they have carried out, and
4 the reports that they have prepared on matters
5 related to the enquiry. Commission counsel
6 will call appropriate witnesses from the public
7 service for the same purpose. On cross-examina-
8 tion it should be possible to obtain complete
9 discovery. Of course, any objections to the
10 production of any studies or reports will be
11 considered by the enquiry."

12 Now stopping right there,
13 as I understand that provision, it gives to the parties and
14 no doubt Commission counsel early on in the proceedings the
15 right to call witnesses, to enquire about the existence of
16 reports and studies, so that full production of them will
17 be given, and I may say that I haven't considered it
18 precisely but if some party did not avail himself of that
19 opportunity, as Commission counsel I might feel obliged
20 to exercise it so that we would have initially in the
21 proceedings, production of documents early on through an
22 oral process, and no doubt when they have been produced
23 there would be requests for adjournment so that productions
24 that were revealed for the first time, if any, could be
25 examined and studied.

26 Now your ruling, sir, also
27 permits -- if I may say so -- counsel to make submissions
28 that will develop a more expeditious way of getting produc-
29 tion. When you say,

30 "Commission counsel will, in consultation with

1 interveners, develop procedures for discovery
2 of all studies and reports in the possession of
3 the Government of Canada as well as Arctic Gas
4 and the interveners. Such material must, of
5 course, be relevant to the enquiry."

6 It is to that suggestion of
7 a more expeditious route for production that our proposed
8 rule responds, so at this stage we can say this, there is
9 no doubt that there will be production of documents, and
10 by "documents " I mean reports and studies. There is no
11 doubt that that production can occur through oral testimony
12 early on, that is at the initiation of the hearing, so
13 the question is not, as Mr. Goldie would have it, respect-
14 fully, whether there will be production or not; the question
15 proposed by the rule is, "How can it be most expeditiously
16 and conveniently achieved?"

17 Mr. Goldie really, as I
18 understand it, takes two objections to the rule that I have
19 proposed. The first has to do with the scope of the
20 rule, and the second has to do with the timing of its
21 application.

22 Now as to the scope, I want
23 to emphasize first of all that we are concerned under this
24 rule to obtain a list, not only from Arctic Gas, but of
25 all the principal parties of all documents -- I'm sorry,
26 all reports and studies and documents of that kind, whether
27 they rely on them or not, which are within their possession
28 or power. We are not concerned, as I understand it,
29 of lists of library books that are published and available.
30 We are concerned with reports and studies within their

1 possession alone.

2 The first thing I observe
3 about that is that that production requirement is a narrow
4 one. It is not a broad one. The production requirement in
5 any Court extends well beyond reports and studies, and goes
6 to all kinds of documents. If there is a burden, as
7 there will be evidently in preparing such a list, it is
8 much less a burden than would occur in any litigation in
9 which the ordinary all-document production rule would apply,

10 Now that such a rule can be
11 complied with is illustrated by Mr. Goldie's assertion it
12 will be complied with. He is going to do that. There
13 is no trouble, really, about the scope of the rule, about
14 the preparation of the list, he's going to do that. All
15 he wants to do is to do it later, in sequence and in
16 stages with the synopsis of evidence that is provided be-
17 fore each witness testifies.

18 Now in my respectful submis-
19 sion while that may be a convenient response to the require-
20 ment of production, it is not satisfactory. Mr. Goldie
21 says -- and I have no doubt is true -- that prior to the
22 commencement of this enquiry to date that there has been
23 revelation, as he put it, of his case which is unparalleled
24 --

25 THE COMMISSIONER: In the
26 history of the world.

27 MR. SCOTT: -- in the history
28 of the world. That indeed may be so, but the question is
29 not whether the revelation is unparalleled, as indeed it
30 may be, but whether it is adequate; and the way to

1 determine whether it is adequate is by the assurance that
2 a list will provide.

3 Mr. Goldie said, "We will do
4 it stage by stage. We can do it; we will do it; we will
5 do it stage by stage."

6 I respectfully submit to the
7 Commission that if it can be done stage by stage, as it
8 can, it should be done now at once, really for two
9 reasons: In the first place, because there is no doubt
10 that a more satisfactory preparation of the case can be
11 made by the parties if they have at least access in advance
12 of the commencement of the case, to all the material that
13 may be relevant in the form of studies and reports during
14 the course of that case. No one would contemplate
15 embarking on the first day of a trial without having seen
16 or at least had access to all the documents by way of
17 reports or studies that would be relevant in the course of
18 that trial, and of course that is precisely what he is
19 asked to do here, that we should receive lists of these
20 documents as we go on throughout the various stages.

21 I respectfully submit that
22 it cannot be said with assurance that that would allow
23 adequate preparation to the parties.

24 Now the second objection to
25 that is if that course is adopted, it is going to be
26 provocative of delay and produce a disorderly introduction
27 of evidence. He felt confident, he said, "We will call
28 our witnesses, and if he refers to some documents which
29 is on the list of documents and you haven't reviewed it,
30 we will ask him to step down and they can come back at some

1 later time for cross-examination."

2 That may deprive one of the
3 parties from asserting that the process has prejudiced
4 him, but it will not be orderly. It will not allow the
5 evidence to develop as a whole, and in context, so that
6 you, sir, and the citizens of the community can sense what
7 is going on in an orderly fashion. It will also be
8 provocative of delay. Surely our objective with respect
9 at this stage should be to allow full preparation, full
10 production so that when the proceedings of the enquiry
11 start, any parties seeking an adjournment because of lack
12 of or inadequate preparation will have to make a strong
13 argument in support of such an adjournment.

14 Mr. Goldie's course, unfor-
15 tunately, is an invitation for such adjournments and if
16 his course were adopted, I fear it would be very difficult
17 for him as we went along to oppose such adjournment at the
18 end of one witness' testimony or before the commencement
19 of another. He has invited it. He has recognized it
20 will be necessary.

21 I respectfully submit that
22 in context, therefore, it can be seen that what we have
23 proposed is practical, it is practical because they are
24 going to do it, and that the only real question before you
25 is when it should be done.

26 While the B.C. Hydro case may
27 be authority for some propositions insofar as it suggests
28 that production could be had during the course of proceed-
29 ings, it is an authority, in my respectful view, that
30 stands in splendid isolation from a long tradition, not

1 only in Court cases, but in enquiries and other proceedings
2 where any kind of production is contemplated.

3 Sir, I only have one other
4 matter that really is minor, but I think requires some
5 kind of comment. A number of the letter correspondents,
6 I think two, had complained justifiably about the fact that
7 in the proposal on page No. 7, with respect to the order
8 of examination are made no reference in the order of examina-
9 tion including parties other than the native people, counse-
10 for environmental groups and Arctic Gas. I need only say
11 that the words used in that proposal are an example merely
12 as we proceed from stage to stage of the case, we will
13 have to develop and will develop, I am sure, a rota so that
14 not only the principal parties will be able to cross-
15 examine, but so that the transient parties, if I may call
16 them that, and interested citizens will be permitted to
17 examine and ask questions from time to time.

18 I think it should be made
19 clear to our correspondents it was not intended by that
20 proposal to exclude a questioning role to be assigned to
21 other groups and other individuals.

22 One more matter relating to
23 the community hearings. It is now trite to say that the
24 community hearings are to be regarded and will be regarded,
25 I am certain, as important. They are hearings of the
26 Commission that take place outside this formal setting
27 in the neighborhood and community settlements where people
28 live. Our recommendation to establish a Committee was
29 never intended -- and I cannot conceive will ever be
30 utilized -- to impose the views of the Committee on any

1 given community. It is, as I think you have noted, sir,
2 a kind of clearing house for the views of the community,
3 for the views of the counsel, or for the views of the
4 native organizations, so that the Commission, having
5 received a recommendation from the Committee, will be in
6 a position to determine the best way to hold those hearings.

7 There are many problems
8 about the community hearings which perhaps the Committee
9 will be able to deal with in consultation with native
10 groups and other groups in the communities to make some
11 recommendation. The form of the community hearings is
12 only one of them. The second and a very important one
13 is the timing of them. As Mr. Sutton has noted, they
14 shall be concurrent, and I have no doubt concurrent they
15 will be.

16 There is a problem, however,
17 in the sense that if they are scheduled too early there
18 will not have been sufficient evidence adduced before the
19 formal hearing to allow the community hearings to have any
20 real awareness of what has preceded. If on the other
21 hand they are scheduled too late, there is a real risk,
22 as Mr. Sutton noted, they will appear to be anti-climatic
23 or the tag end. It is simply my submission that the
24 Committee under Professor Jackson should be established
25 in order to make, to develop plans, to clear ideas of the
26 communities and then to make some recommendation as the
27 course to be adopted.

28 I don't think I have any
29 further submissions.

30 MR. GOLDIE: Could I not

1 reply? I just want you, Mr. Commissioner, not to think
2 Mr. Scott and I are as close together as he suggests on
3 the scope.

4 The proposal I made yesterday
5 was to put the onus on the witness to say what he was
6 going to rely on, what he thought to touch on, and to relieve
7 counsel of going through an enormous amount of documents.

8 My friend has modified his
9 proposal very considerably, and I am aware of that, and
10 sensitive to that. He is inclined to now reports and
11 studies and such, and as first drafted he didn't say that,
12 but there is still a very great burden. I didn't want
13 my friend to be misled by suggesting the scope is exactly
14 as I have proposed it will be approached

15 Finally, one other thing,
16 Mr. Commissioner, I said a document would be produced that
17 was asked for, but that is subject to my consideration, my
18 client's consideration; in other proceedings it may very
19 well be the reason I will have to decline the production
20 for reasons that I have to justify, which don't relate to
21 these proceedings.

22 My interjection that it would
23 be produced, I don't want to be misunderstood. I simply
24 said there is -- I was deferring, I meant to defer but
25 there are literally hundreds of documents, identified
26 bibliography, published material, I haven't been asked
27 for any of them. With respect to those, of course they
28 will be produced. Other documents, reports, there are
29 many of those, each will have to be given individual
30 consideration. Such consideration has already been given

1 to those we can identify, but beyond that I am starting
2 to reply and I am not entitled to that.

3 THE COMMISSIONER: I have
4 one last question. Looking ahead, so far as we can, we
5 have been given to understand that Arctic Gas answers to
6 the supplementary questions of Dr. Fyle's Assessment
7 Group should be forthcoming by the end of this month, and
8 Dr. Fyle's report will be forthcoming about the end of
9 October, and if I were to comply with Mr. Scott's proposal
10 regarding documents, the question in my mind is, assuming
11 there is an immediate request for a list from any party,
12 should there be a time limit imposed for the production of
13 that list?

14 Really, in my mind I think
15 it should be assumed if I do apply Mr. Scott's proposal
16 everyone ought to produce a list, certainly Mr. Scott and
17 Mr. Goldie assumes it to be clear that each participant
18 should make such a request. I can't imagine anyone not
19 making a request from Mr. Scott and Mr. Goldie. Do you
20 wish me to consider some time limit, were I to accept Mr.
21 Scott's proposal?

22 MR. GOLDIE: I must say again,
23 Mr. Commissioner -- first you made reference to the
24 answers to the assessment group report, to a considerable
25 degree a number of those answers require design work beyond
26 the feasibility level, by that I mean beyond the level at
27 which feasibility is determined, and you move into the
28 detail. We had two choices at that point. Some of
29 those questions were so characterized that to reply, it
30 doesn't accord with the provisions you made which was the

1 questions were thought to be the feasibility level and
2 consequently we have been trying to develop material and
3 answer that.

4 The second course we have
5 chosen, and some of that work is still in hand, I'm not
6 sure if they will consolidate all the answers in one
7 volume and have them printed, but I can say they will be
8 on hand at the end of the month, it will take something
9 like that.

10 To a very considerable
11 degree if you impose your rule with a time limit, I am
12 going to have to put a stop to a good deal of that work
13 right now and start work on what I consider to be a counter-
14 productive proposition which is the digging out of documents,
15 engineers sitting down with counsel, subject to the query
16 whether there's anything more than this and so on down the
17 line. It must follow from the submission I have made that
18 if there is a time limit on something which I submit is
19 an unnecessary and onerous requirement simply compounds the
20 problem, so far as I am concerned. I can make no submis-
21 sion with respect to time.

22 I said this morning we
23 intend to turn these things out as quickly as we can.
24 We have no interest in holding back, but having been
25 dictated, how we use our work force is, I think, with great
26 respect, I think it is uncalled for.

27 MR. SCOTT: Could I respond
28 to that? It is unfortunate but it is true, every rule
29 adopted to a certain extent directs the way counsel uses
30 his work force. It is unfortunate it is characteristic

1 of all rules with which Mr. Goldie and others, and I am
2 sure I, have lived. Obviously the burden of preparing
3 for this list is going to vary from party to party, and
4 if the rules to be adopted impose a heavy burden on Arctic
5 Gas, of which I have no doubt, but I think it also imposes
6 a heavy burden on me which I am beginning to worry about,
7 but there it is.

8 I am concerned if there is
9 no time limit fixed it would be open to a party to deliver
10 his list the day before the hearing date, and have made
11 complete compliance, and that, of course, would be produc-
12 tive of delay because the person receiving it would say,
13 at the hearing date, "Well, I only got it yesterday, I
14 need a four-week adjournment," and that would be unsatis-
15 factory and would not assure orderly procedure.

16 May I suggest that a time
17 limit should be fixed with the proviso that any person
18 unable to meet that time limit might apply for an exten-
19 sion and it being understood that Mr. Goldie may be one
20 of the first applicants under that rule, perhaps. May I
21 suggest that a time limit therefore be four weeks following
22 the request?

23 MR. GOLDIE: This rule really
24 is aimed solely at one party. We are the only party that
25 ever came and said, "I've got some documents." Why on
26 one side, being saddled with a rule and people sitting
27 around saying they want more time, we want it to be heard
28 in June. We want to get on. It is in our interest and we
29 are being treated as if we are dragging our feet. I
30 find it uncomprehensible, with great respect.

1 THE COMMISSIONER: That is
2 why we're holding a hearing to consider Mr. Scott's
3 proposal.

4 The issue in principle, Mr.
5 Goldie, apart from the practical difficulties which I am
6 aware of, you have outlined them and no one has challenged
7 your statements so far, as they were made in good faith.
8 The issue in principle is whether Arctic Gas is to be
9 required to disclose the studies and reports in its
10 possession, or whether the enquiry is simply going to rely
11 on the goodwill of Arctic Gas in supplying them through
12 witnesses, as they are called. That is what concerns
13 me. Everybody else, it's all very well to say, "well,
14 they don't have a warehouse full of documents."

15 Alberta Gas Trunk says it
16 is willing to submit to the rule, and the task is onerous.
17 What concerns me, if there were to be a time limit, it would
18 seem to make more sense to have a time limit calculated
19 from the day when the hearings are to begin rather than
20 one calculated from the day a request was made.

21 MR. ANTHONY: Mr. Commission-
22 er, if I could just make a brief submission here on
23 behalf of the Northern Assessment Group, I think it is
24 important that our position be underlined in that the
25 vast majority of the work of that group is, of course,
26 based on the documentary evidence. The starting point
27 for much of the work is an assessment of the literature
28 that is presently available, and I think that if the
29 position of Arctic Gas is that they wish to proceed as
30 quickly as possible with this hearing, we are in accord

1 with it, then I would think that the production must be
2 at the very earliest date. Mr. Goldie has made it clear
3 that there are a large number of documents that are even
4 now known, and I'm sure that this process can start at an
5 early date, and I would hope that if we are all in agreement
6 that we wish to proceed as quickly as possible, that this
7 process can begin and if a date is to be set, that we
8 keep in mind the time frame reference that the Northern
9 Assessment Group has laid down, and that they feel they
10 require a three to four-month period from the time the
11 documents they start their literary assessment before
12 they are prepared to proceed with the hearing.

13 If the time frame is going
14 to be from the date of the hearing, that this is in fact
15 a crucial time period in order to ensure that this group
16 and because of the reliance of the number of other parti-
17 cipants on this type of research, that the time reference
18 be in relation to that time period.

19 THE COMMISSIONER: Well, I'll
20 give it some thought and I'll let you all know as soon as
21 I can what I propose to do. So the hearing is adjourned.

22 (PROCEEDINGS ADJOURNED AT 1:10 P.M.)
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M835 AUTHOR Mackenzie Valley Pipeline	
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OCT 31 1974	<i>Carle</i>
DEC 18 1974	

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